



Neutral Citation Number: [2012] EWHC 1809 (QB)

Case No: HQ09X02934

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 06/07/2012

**Before:**

**THE HONOURABLE MRS JUSTICE SHARP DBE**

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**Between:**

**PROFESSOR MOHAMED SALAH EL DIN HAMED  
EL NASCHIE**

**Claimant**

**- and -**

**(1) MACMILLAN PUBLISHERS LTD (TRADING  
AS NATURE PUBLISHING GROUP)  
(2) MR QUIRIN SCHIERMEIER**

**Defendants**

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**Professor Mohamed Salah El Din Hamed El Naschie (Acting in person) for the Claimant  
Andrew Caldecott QC and Aidan Eardley (instructed by Taylor Wessing LLP) for the  
Defendant**

Hearing dates:

11, 14, 16-18, 21, 22, 25, 28-30 November and 1-2 December 2011

Closing submissions:

20 December, 12 January, 19 January 2012

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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**THE HONOURABLE MRS JUSTICE SHARP DBE**

**Mrs Justice Sharp:**

1. This is the judgment following the trial, of an action for libel brought by the Claimant, Professor Mohammed Salah El Din Hamed El Naschie against the First Defendant Macmillan Publishers Limited trading as Nature Publishing Group, the publishers of Nature magazine (*Nature*), and one of its journalists, Mr Quirin Schiermeier (QS), the Second Defendant.
2. The Claimant appears in person, assisted by his former wife, Lydia Thorsen-El Naschie. Mr Andrew Caldecott QC and Mr Aidan Eardley appear on behalf of the Defendants.
3. The Claimant describes himself in the Particulars of Claim as an eminent and highly respected academic, scientist and scientific publisher in the fields of Structural Engineering, Applied Mathematics, Applied Mechanics and Nuclear and High Energy Physics. These claims are not admitted by the Defendants. It is common ground that the Claimant is a structural engineer by training, a subject in which he has a PhD, and that he was the Founding Editor of an international scientific journal *Chaos, Solitons and Fractals* (CSF). He served as its Editor-in-Chief for 17 years from June 1990, until late 2008/early 2009 when he retired in circumstances which are controversial in this action.
4. The Claimant was appointed to his position as Editor-in-Chief of CSF under a contract ('the Publishing Agreement') made between himself and Pergamon Press Plc. That company's rights and obligations under the Publishing Agreement were then assigned to Elsevier B.V. or its English subsidiary, Elsevier Ltd (referred to collectively as Elsevier). Elsevier was CSF's publishers during the period material to this action.
5. *Nature* is one of the world's leading scientific journals. It was founded in 1869 and is now the world's most highly cited interdisciplinary science journal. *Nature* is published weekly in electronic and hard copy. Articles from it are posted on a website [www.nature.com](http://www.nature.com) (the website) owned and operated by the First Defendant. In addition to publishing scholarly articles, *Nature* reports on news which is of interest to the scientific community. QS is an experienced science journalist.

*The words complained of*

6. The words complained of in this action were published in the issue of *Nature* dated 27 November 2008, issue 7221 of Volume 456 on page 432 in an article under the headline "*Self-publishing editor set to retire*" (the Article). The Article was illustrated by a photograph of piles of journals captioned: "*Apparent misuse of editorial privileges has sparked calls for a clearer peer-review process across journals.*" The Article remained available on the website until 5 March 2009, and the headline continues to be available.
7. The Article said as follows (with its paragraphs numbered for ease of reference):

### **Self – publishing editor set to retire**

1. The editor of a theoretical–physics journal, who was facing growing criticism that he used its pages to publish numerous papers written by himself, is set to retire early next year.
2. Five of the 36 papers in the December issue of *Chaos, Solitons and Fractals* alone were written by its Editor-in-Chief, Mohamed El Naschie And the year to date has seen nearly 60 papers written by him appear in the journal.
3. A civil engineer by training, El Naschie attempts to combine aspects of particle physics and chaos theory. Many of his papers revolve around the idea that fractal properties of space-time can influence elemental particles and physical constants.
4. Most scientists contacted by *Nature* comment that El Naschie’s papers tend to be of poor quality. Peter Woit, a mathematical physicist at Columbia University in New York, says he thinks that “it’s plain obvious that there was either zero, or at best very poor, peer review, of his own papers”. There is, however, little evidence that they have harmed the field as a whole.
5. El Naschie, who was born in Cairo and now splits his time between England and Germany, rejects any charges of sloppy peer review. “Our papers are reviewed in the normal way expected from a scientific international journal published by a reputable international publisher,” he told *Nature* in an e-mail signed by P. Cooper, who claimed to be a spokesperson for the editorial board of *Chaos, Solitons and Fractals*. Elsevier, which publishes the journal, is a member of the Committee on Publication Ethics, which holds that good editors “ensure that all published reports of research have been reviewed by suitably qualified reviewers”.
6. On 25 November, Elsevier’s director of corporate relations, Shira Tabachnikoff, wrote an e-mail to *Nature* saying: “Dr El Naschie’s retirement as Editor-in-Chief of *Chaos, Solitons and Fractals* will be announced to readers in the first issue of 2009. Elsevier and Dr El Naschie have been in discussion for quite some time about the details of his retirement and the transitional arrangement for papers under review.”
7. In a separate e-mail Tabachnikoff wrote: “[We are] committed to supporting our editors in maintaining high standards for both the editorial and peer- review process. At times there may be discussions about particular scientific issues and fields, even at the level of individual editorial decisions. That is a part of the normal process of scientific publishing.”
8. El Naschie defended the journal’s publication record, saying: “We put more emphasis on the scientific content and the originality of the papers and slightly less emphasis on prestigious addresses and impressive affiliations.” His website lists a number of such affiliations, including honorary professorships at Shanghai Jiao Tong University and Donghua University, also in Shanghai. By his own account, which could not be confirmed by *Nature* despite a number of attempts, he is an advisor to the Egyptian Ministry for Science and Technology and a principal adviser to the Ministry of Science and Technology of Saudi Arabia.
9. But he is not, as he claims on his website, a distinguished fellow of the Institute of Physics at the Johann Wolfgang Goethe University in Frankfurt, Germany, says Walter Greiner, a former director of the institute. Greiner also says El Naschie has ignored his requests to remove his name from the list of members of the journal’s honorary editorial board. Through Cooper, El Naschie says that it would not be “appropriate” to address these concerns.

10. *Chaos, Solitons and Fractals* was founded by El Naschie in 1991. It costs US \$4,520 a year, and usually comes bundled with access to other Elsevier journals. Most large research organizations have electronic access for this reason.

11. The journal has a relatively high impact factor of 3.025 for 2007. But that may be the result of a high rate of self-citation, says Zoran Škoda, a theoretical physicist at the Ruder Bošković Institute in Zagreb, Croatia. Of the 31 papers not written by El Naschie in the most recent issue of *Chaos, Solitons and Fractals*, at least 11 are related to his theories and include 58 citations of his work in the journal.

12. In May, Škoda sent letters to members of the journal's editorial board asking whether they agreed with El Naschie's editorial practices. In return, he says, he and his institute director received a letter, signed by a P. Green who identified himself or herself as a legal advisor to the editorial board, threatening legal action should Škoda continue sending "defamatory" letters.

13. Škoda notes that Ji-Huan He, the journal's regional editor for China and a mechanical engineer and computer scientist at Donghua University, also cites El Naschie's work frequently. The current issue of the journal has one paper by He that cites himself 14 times and El Naschie twice. He is also editor of the *International Journal of Nonlinear Sciences and Numerical Simulation*, which in a 2005 editorial said: "Men of genius like Einstein and El Naschie very often ask some straightforward and seemingly innocent questions, which may turn out to have undreamed of answers."

14. A small minority of physicists cautiously recognizes the originality of El Naschie's ideas. "They're at least interesting," says Werner Martienssen, a retired physicist at the Johann Wolfgang Goethe University, and one of the regional editors for Europe on *Chaos, Solitons and Fractals*.

Quirin Schiermeier

### *Issues*

8. There is no dispute that the Article is defamatory of the Claimant. The issues which I have to determine are meaning (to a limited extent) and the three substantive defences advanced by the Defendants: justification (truth), honest comment and *Reynolds* privilege. Because of my conclusions on liability, the issue of damages does not arise.

### *Summary of conclusions*

9. My conclusions are that the Article is substantially true whether one considers the meanings complained of by the Claimant or justified by the Defendants (insofar as there is any difference), that it contains comments which are defensible as honest comment and that it was the product of responsible journalism, so that the defence of *Reynolds* privilege succeeds.

### *The scope of the action*

10. Although there have been a number of distinct issues for me to resolve, the case has principally concerned the integrity of editorial self-publication and peer review in scientific peer reviewed journals by reference to the editorial practices of the Claimant and the quality of his own articles which were published in CSF. It has not concerned the qualities of the Claimant as a scientist generally, or the substantive merits of his theories which are matters which could and should be capable of being addressed (if

not resolved) within the scientific community by ordinary scientific discourse and debate.

### *Preliminary Matters*

11. *Case Management:* Eady J gave judgment in June 2011 on a series of applications brought by the Defendants for the purpose of streamlining the case management of the claim and preparing it for trial. In particular he struck out the claim for special damages and portions of the Claimant's re-amendments to the Reply, and gave directions excluding evidence on a number of issues which were not pleaded or of marginal significance. These issues have nonetheless continued to preoccupy the Claimant including in the extensive correspondence he has engaged in with the court. His belief, and that of some of his witnesses, that there is an overarching conspiracy between the Defendants and other newspapers, journals and individuals who are said to have plagiarised his work has formed no part of the matters considered during the course of this trial.
12. *Representation:* The Claimant was originally represented by solicitors and experienced leading and junior Counsel, but his solicitors came off the record in July 2010, after the principal statements of case had been settled, stating that they were unable to obtain instructions. The Claimant has acted in person ever since.
13. As a result, preparation for trial has been far from straightforward. For example, the Claimant has failed to provide proper responses to requests for further information about matters which went to the core of some of the issues in the action, despite being ordered to do so. He has also failed to engage in essential pre-trial preparation or has been obstructive to that process. The Defendants, their solicitors and counsel have nonetheless dealt fairly with such matters and with the Claimant himself in sometimes difficult circumstances.
14. This time allotted to the trial (a period of 4 weeks) was fixed long in advance by agreement. The Claimant however did not want the case to come on for trial during this period. It is not necessary to go into the history of his various applications for an adjournment, the details of which can be found in the rulings I made during the trial: see for example [2011] EWHC 2839 (QB), [2011] EWHC 3081 (QB) and [2011] EWHC 3218 (QB). In the event, for pragmatic reasons, the Claimant was given considerable latitude in conducting the trial itself, with regard to the receipt of witness evidence and the like. I made it clear however, by a direction to the parties that I was not prepared to carry on receiving evidence from the Claimant (or anyone else) after the trial itself had concluded.

### *Evidence*

15. *Expert evidence:* For the purposes of the plea of justification each party was given leave to rely on 3 experts in the respective fields of applied mathematics and theoretical physics, statistics and editorial practice in scientific journals. The direction was for sequential exchange, with the Defendants' reports to be served first. This represented a more proportionate approach than requiring the parties to engage in detailed analysis of the Claimant's articles in their pleadings. I heard oral evidence from each of the Defendants' experts. I excluded one of the reports the Claimant wished to rely on pre-trial (that of Mrs Thorsen-El Naschie); but indicated without

ruling them out, again for pragmatic reasons, and given the Claimant was in person, that I would consider the validity of the other two (from Dr Leila Marek-Crnjac and Professor Ji-Huan He) and the Defendants' objections to them, during the trial itself. In the event their reports were adduced without either Dr Marek-Crnjac or Professor He being called.

16. *Witnesses of Fact: oral evidence:* The Defendants' case was heard first. I heard oral evidence in support of the case on justification from Doctor Benjamin de Lacy Costello, Professor Timothy Pedley, and Mrs Yamin Liu; and on the issue of *Reynolds* privilege from Alex Witze, Mark Peplow and QS. The Claimant and Mrs Thorsen-El Naschie gave evidence and the Claimant also called Professor Otto Roessler, Scott Olsen and Professor Garnet Ord.
17. *Hearsay evidence:* The Defendants relied on the statements of Dr Germano D'Abramo, Professor Doctor Dirk Rischke, Dr Charon Duermeijer and Martin Tanke, all of whom are abroad. Though he had not made timely efforts either to secure their attendance or to adduce their evidence in hearsay form, I gave the Claimant permission to rely by way of hearsay on all of his witnesses who he was not in a position to call, subject to questions of admissibility. I did not attach less weight to any of this evidence because the witnesses did not attend for cross-examination, with the exception of Ms Anke Boehm. I deal with this matter further at paragraphs 181 to 185 below.
18. The content of the Claimant's hearsay witness statements however raised other issues. It would not have been proportionate to deal with them individually but in general terms they included a great deal of material which was irrelevant or which was of limited, if any assistance in determining the issues in the action. Included in their number for example was one from someone who read about this litigation on the internet, and thought it would be helpful to offer his opinions on the matters the court had to decide. Many concentrated on matters which the court had already ruled could not be the subject of evidence. Most lacked any particularity; and were almost entirely unsupported by documents. In addition, there was a substantial amount of what might be called testimonial evidence, that is evidence relating to the esteem in which the Claimant is held by fellow scientists which was of limited relevance on the question of damages (as establishing the Claimant's good reputation prior to the publication of the Article); a question which in the event did not arise.
19. *Documents:* The Claimant complained at various stages including in his closing submissions about the Defendants' disclosure: in particular, that he was refused inspection of original documents and he has also asserted at various times that documents disclosed by the Defendants are forgeries. I have seen nothing to substantiate the claims of forgery or to indicate that the Defendants' disclosure process was defective. The pre-trial correspondence demonstrates in my view that the Claimant's requests were properly dealt with. I refer in particular, to a lengthy letter from the Defendants' solicitors dated 24 March 2011 which explained why the Claimant's requests for inspection were misconceived and/or disproportionate and invited him to specify precisely which documents he was challenging, which he then failed to do.

**Issue One: Meaning**

20. The meanings attributed to the article by the Claimant and those justified by the Defendants (the so-called *Lucas-Box*<sup>1</sup> meanings) are not very different in substance, although expressed differently. It is helpful to set them out side by side.

<b>Claimant's Meanings (Particulars of Claim Paragraph 5)</b>	<b>Defendants' <i>Lucas-Box</i> Meanings (Amended Defence Paragraph 7)</b>
<p>5.1 <i>The Claimant has improperly misused his editorial privileges as Editor-in-Chief of the journal Chaos, Solitons and Fractals, in order to self-publish numerous papers he had written, which would not have been published elsewhere as they were of poor quality and had received no, or very poor, peer review, thereby creating a falsely high rate of citation for his own work and a falsely high impact factor for the journal which he edited; and/or</i></p> <p>5.2 <i>The Claimant has lied on his website about his academic and professional affiliations, in particular his false claim to be a Distinguished Fellow of the Institute of Physics at the Johann Wolfgang Goethe University in Frankfurt, Germany, as well as his false, or probably false, claims to be an advisor to the Egyptian Ministry for Science and Technology and a principal advisor to the Ministry of Science and Technology of Saudi Arabia; and/or</i></p> <p>5.3 <i>The Claimant's lie about his affiliation to the Johann Wolfgang Goethe University in Frankfurt, Germany was so bad that Walter Greiner, a former director of the Institute of Physics at the Goethe University, had asked for his name to be removed from the Honorary Editorial Board of the journal Chaos, Solitons and Fractals, a request which the Claimant has deliberately ignored; and/or</i></p> <p>5.4 <i>In the premises, the Claimant was unfit to act as Editor-in-Chief of the journal Chaos, Solitons and Fractals, and has been forced to retire."</i></p>	<p>(a) <i>The Claimant abused his position as Editor-in-Chief by publishing in Chaos Solitons and Fractals ('CSF') an excessive number of articles written by himself.</i></p> <p>(b) <i>The Claimant's articles tended to be of poor quality.</i></p> <p>(c) <i>Whilst CSF was under the Claimant's editorial control his articles had been subject to (at best) very poor peer-review before publication in CSF.</i></p> <p>(d) <i>CSF's Impact Factor may have been inflated by an excessive rate of citation of the Claimant's articles in CSF during his editorship.</i></p> <p>(e) <i>There were reasonable grounds to suspect that the Claimant's imminent retirement as Editor-in-Chief was connected to these aforesaid faults as Editor-in-Chief. Alternatively, if the Article meant and was understood to mean that the Claimant was dismissed or forced to retire because of his faults as Editor-in-Chief, then it is true in that meaning also.</i></p> <p>(f) <i>The Claimant was cavalier about his academic and professional affiliations, having falsely claimed to be a distinguished fellow of the Institute of Physics at the Johann Wolfgang Goethe University in Frankfurt, and having made other suspect claims to impressive academic affiliations. If, which is denied, the Article meant that the Claimant had claimed affiliations to which he knew he was not entitled, the Defendants will contend that the Article was also true in that meaning.</i></p> <p>(g) <i>There were reasonable and serious grounds for suspecting that the Claimant used, or caused others to use, fictitious names in order to respond to enquiries about his editorial practices.</i></p>

21. Both sets of meanings focus on the following matters: self-publication by the Claimant in CSF of an excessive number of his own papers; the poor quality of those papers; the poor peer-review (at best) which they had been subjected to; excessive citation of the Claimant's articles in CSF during his editorship and its effect on CSF's

<sup>1</sup> See *Lucas-Box v News Group Newspapers Ltd* [1986] 1 WLR 147.

impact factor <sup>2</sup> the Claimant's "forced retirement" because of his faults as Editor-in-Chief of CSF and false claims by the Claimant about his academic and professional affiliations. As to the latter, the Claimant alleges the Article means he lied about them on his website. The Defendants justify the allegation that the Claimant was cavalier about his claims; in the alternative, that he claimed affiliations to which he knew he was not entitled.

22. The additional matter justified by the Defendants at paragraph 7 (g) of the Amended Defence relates to the use of the Claimant of fictitious names in correspondence purporting to come from CSF's editorial board (the names are *P. Cooper*, *H.G. Boehm*, *C. Cole*, *P. Stanton* and *P. Green*). This is not complained of by the Claimant as a distinct defamatory meaning. But the Defendants are entitled to advance a plea of justification in respect of it in my view as it is a meaning that the words bear; and in answer to the Claimant's claim in aggravation of damages. The aggravated damages claim asserts in part that the Article suggests through its "*disingenuous*" portrayal of various emails from CSF's editorial board that the Claimant had tried to protect his editorial position by sending correspondence purporting to come from a member of the editorial board "*whether fictitious or otherwise*".
23. The principles which the court must apply when determining meaning in a trial by judge alone, are well-settled. See, for example, the summary in *Skuse v Granada Television Ltd* [1996] EMLR 278, 285-287. The court should consider the overall impression that the Article makes before considering detailed textual arguments made by the parties: *Armstrong v Times Newspapers Ltd* [2006] EWHC 1641 [31].
24. Focusing on substance rather than nuance there are only four differences that need to be addressed. It is sufficient to state my conclusions in respect of those differences briefly given my conclusion on justification which is that where relevant the Defendants have justified the more serious meaning complained of by the Claimant or section 5 of the Defamation Act has excused what is published. The result is that the differences on meaning, such as they are, have played no part in my conclusions on liability overall.
25. First, in my view the Article does not suggest that self publication of the Claimant's papers *did* create a falsely high impact factor, but only that it *may* have done. That is the plain meaning of the words used in paragraph 11 of the Article ("*The journal has a relatively high impact factor of 3.025 for 2007. But that may be the result of a high rate of self-citation, says Zoran Škoda, a theoretical physicist at the Ruder Bošković institute in Zagreb, Croatia*"). There is nothing in the context in my judgment which would lead the ordinary reasonable reader to conclude that "*may*" meant "*did*".
26. Second, I do not consider the Article alleges that the Claimant *lied* about his qualifications. It does no more than state that his claim about being a distinguished Fellow of the Institute of Physics at Johann Wolfgang Goethe University in Frankfurt is false. The Claimant would obviously be responsible for such an error, and therefore culpable to that extent. Further his failure (through Cooper) to address these concerns strongly suggests the claim is not a mistake. But I do not think these considerations necessarily lead to the inference that the Claimant had lied about his qualifications, but rather, that he had been somewhat cavalier in making the relevant claims.

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<sup>2</sup> This term has a special meaning in this context: for a definition, see paragraph 77 below.



27. Third, the Defendants submit that the references in paragraph 9 of the Article to Professor Greiner wanting to have his name removed, and relied on by the Claimant for his third meaning, do not give rise to a distinct sting, but contribute to the allegation that CSF was badly run and published poor quality papers. Although what is said in paragraph 9 is part of that overall picture, in my view it does give rise to a distinct defamatory imputation, but not the one complained of by the Claimant. First, as I have said I do not consider the Article suggests the Claimant lied about his affiliations. Second, in my view the Article does not suggest that Professor Greiner's reason for wishing to have his name removed *is* the Claimant's false claim about being a distinguished Fellow of the Institute of Physics. This is clear from the use of the word "*also*" in the second sentence of paragraph 9 which suggests that Professor Greiner had some other reason for removing his name from CSF's editorial board. However I do consider the conjunction of the sentences in paragraph 9 gives rise to the inference that there may well have been a connection between the two events: in other words there are grounds to suspect that the false claim may have been at least one of the reasons Professor Greiner asked for his name to be removed from the editorial board of CSF.
28. Finally, in my view the Article does not allege that the Claimant was *forced to retire* but bears the lower 'reasonable grounds to suspect' meaning, contended for by the Defendants. I do not think the ordinary intelligent reader of *Nature* would attach some sinister significance to the fact that the retirement is mentioned at all, or headlined, since he or she would readily appreciate the retirement of a controversial editor is newsworthy in itself. In any event, the Article does not say that the Claimant was forced to retire. Instead, the headline says "*set to retire*" which is not the same as "*forced to retire*". Whilst a reasonable reader might have some suspicions about what Elsevier has to say about it (which is that there had been discussion for some time about the details of the Claimant's retirement) - hence the reasonable grounds to suspect meaning - there is nothing expressly to contradict what Elsevier says; nor is there anything to suggest *Nature* had any inside information on the retirement discussions themselves.
29. In addition to the meanings they justify, the Defendants defend three comments for the purposes of the defence of honest comment (the so-called *Control Risk*<sup>3</sup> comments);
- i) It is obvious that the Claimant's papers published in CSF have been subjected to no, or only very poor peer review;
  - ii) The Claimant's papers published in CSF tend to be of poor quality;
  - iii) CSF's impact factor of 3.025 for 2007 may be the result of an excessive rate of citation of the Claimant's own articles published in CSF.
30. These are identical in effect to the meanings justified by the Defendants at paragraph 7 (a), (b) and (d) of the Amended Defence. Each of them closely follows the wording of the Article and it could not sensibly be disputed that they are meanings the Article bears. I shall consider the defence of honest comment after that of justification, albeit

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<sup>3</sup> See *Control Risks Ltd v New English Library* [1990] 1 WLR 183.

it does not affect the question of liability overall in circumstances where as I find, the Defendants have succeeded in proving the criticisms are well-founded.

**Issue Two: Justification**

31. It is necessary to say something about the expert evidence relied on by both sides before addressing the discrete issues with which the experts' evidence was concerned.

*Defendants' Expert Reports*

32. The Defendants relied on reports from the following experts.
33. *Professor Neil Turok (applied mathematics and theoretical physics)*: Professor Turok's report was principally directed at the quality of the Claimant's papers published in CSF. For reasons of proportionality Professor Turok confined himself to the 58 papers the Claimant published in CSF in 2008 which are relied on for the purposes of the defence of justification.
34. Given the scope of the action, he did not as he said himself address the ultimate correctness or otherwise of the Claimant's 'E-infinity theory', but in accordance with the Defendants' pleaded case considered whether those 58 papers exhibited the qualities (for example, of coherence, clarity and novelty) which are to be expected in any scientific paper, whatever theory it is expounding or discussing. In light of his findings on the quality of the Claimant's papers, which were that they did not exhibit those qualities, Professor Turok also concluded that the degree of self-publication by the Claimant in CSF was excessive and he drew the inference that the Claimant's papers cannot have been the subject of any, or any proper peer review.
35. *Marie McVeigh (statistics)*: Ms McVeigh's evidence was principally directed at substantiating the various statistics which were relied on to support the Defendants' case that the Claimant published an excessive number of articles in CSF, that there was an excessive degree of citation of his articles in other articles published in CSF, and that this excessive citation may have inflated CSF's impact factor" (a term which Ms McVeigh explained). She also made observations on CSF's citation statistics in comparison to those in scientific publications generally, and in journals comparable to CSF in particular.
36. *Professor Jonathan Keating*: Professor Keating dealt with the standards and procedures which are to be expected in the administration of a scientific journal, in particular in connection with the peer review process and the special safeguards which are needed where an editor seeks to publish in his own journal. He considered the Claimant's evidence in relation to these issues. He concluded, even accepting that evidence at face value, that peer review at CSF in general was deficient, that the process for review of the Claimant's own papers was inappropriate, and that the degree of self-publication by the Claimant would generally be considered excessive.
37. The Claimant addressed various questions to each of the Defendants' experts before trial. Some were answered, but the balance did not fall within CPR 35.6 in my view. They were neither proportionate, nor directed at obtaining clarification of the reports; at the Defendants' request, I directed at the pre-trial review, that they need not be answered.

*The Claimant's Expert Reports*

38. The Claimant served 3 reports: from *Dr Leila Marek-Crnjac* (responding to Professor Turok); from *Mrs Thorsen-El Naschie* (responding to Ms McVeigh) and from *Professor He* (responding to Professor Keating). The authors each also provided a witness statement of fact for the Claimant.
39. I excluded Mrs Thorsen-El Naschie's report before the trial began. She admitted she lacked the relevant expertise as a statistician, and there were obvious problems with regard to her independence and objectivity as she is the Claimant's former wife and has played an active role in supporting him in these proceedings. As it is, her report did not take issue with any of Ms McVeigh's raw data or calculations (which were, in the event, uncontroversial) or any of Ms McVeigh's observations on those figures.
40. Dr Marek-Crnjac works at the Institute of Mathematics and Physics at the University of Maribor in Slovenia. Professor He says he is the founding editor of a major journal published by Freund in Israel and he is or has been on the Editorial Board of numerous international Journals for physics and Non Linear Dynamics, though so far as I am aware, these have not been specified. Dr Marek-Crnjac and Professor He's reports (as supplemented by further communications to the court) were in the event of no real assistance in the resolution of the issues in the action for a number of reasons.
41. First, their reports suffered from the deficiencies that might have been anticipated in circumstances where they were prepared without the intervention of solicitors. As to form, for example they did not provide proper details of their author's qualifications<sup>4</sup> or set out the substance of the instructions which had been provided to the author.<sup>5</sup> None of the reports contained the statement<sup>6</sup> that the author understood, and had complied with, their duty to the court. There was in addition, either no or no meaningful response to written questions which were asked of each of them by the Defendants, and which were aimed (amongst other things) at clarifying what their qualifications were and what instructions they had been given.
42. Second, there was no or no meaningful response to the Defendants' requests for documents each had referred to in their reports and which Eady J had ordered should be provided. Particularly significant in this context were those requested of Dr Marek-Crnjac as they were central to her reply to one of Professor Turok's key criticisms on quality. In Professor Turok's report he said that the Claimant's "E-infinity theory" was nowhere coherently explained in the Claimant's papers which he reviewed. Dr Marek-Crnjac's response suggested that criticism was unfounded by reference to "*earlier works*" and "*two very pertinent publications*". None of these works or publications were ever identified or provided despite the court's order that they should be. Thus the assertions she made could neither be tested nor accepted. The Claimant's only response to the Defendants' requests in relation to this matter - that the Defendants should be able to find these "*earlier works*" and "*two very pertinent publications*" for themselves - was positively obstructive in my view.

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<sup>4</sup> CPR 35 PD 3.2(1) and paragraph 13.6 of the Protocol.

<sup>5</sup> CPR 35.10(3), CPR 35 PD 3.2(3), and paragraph 13.14 of the Protocol.

<sup>6</sup> CPR 35.3 and paragraph 4 of the Protocol.

43. Third, and in any event, neither of the reports really engaged with the reports to which they were supposed to be responding. As already indicated, Dr Marek-Crnjac's report engaged to a minimal degree only with the opinions of Professor Turok. She did not as would have been expected, particularly given the sequential exchange of reports, go through the exercise of examining the 58 papers analysed by Professor Turok and explain why they were to be regarded as good quality papers. As the Defendants have pointed out, this omission is particularly surprising given that Dr Marek-Crnjac claimed to have peer reviewed all of these articles prior to their publication in CSF. Instead, and unhelpfully for the most part, her report consisted of an *ad hominem* attack on Professor Turok himself.
44. There were similar deficiencies with Professor He's report which also engaged to a minimal degree only with the report to which it was supposed to be responding. His later "response to cross examination of Defendants' Experts" was not admissible, since it purported to respond to Professor Turok's cross-examination, rather than that of Professor Keating. The principal features of Professor He's report were in the event an attempt to incorporate by reference the views of another writer (a Professor Magueijo) on peer review generally in what the Defendants correctly submit was a vague manner which did not assist in determining whether the editorial standards at CSF were appropriate; and it contained various factual assertions about procedures actually employed at CSF and other journals.
45. Fourth, both Dr Marek-Crnjac and Professor He were strong advocates for the Claimant and therefore to that extent *parti pris*. Dr Marek-Crnjac referred for example to the Claimant as "the master". As can be seen from the Article itself, Professor He compared the Claimant to Einstein and Newton. This is antithetical to the requirement<sup>7</sup> that experts should not take it upon themselves to promote the point of view of the party instructing them or engage in the role of advocates. In addition, according to their witness statements, they were both directly involved in the relevant events regarding the practices and procedures adopted, in particular with regard to peer review, at CSF. There are circumstances where it may be appropriate for a witness to give both expert and factual evidence (for example where a professional person is involved in litigation personally: see e.g. *Lusty Architects v Finsbury Securities Ltd* (1991) 58BLR 66). In these particular circumstances however I was not satisfied that either Dr Marek-Crnjac or Professor He possessed the requisite independence and expertise to render their observations, limited as they were on the material issues, of any real assistance in the determination of them.

*Overlap between the issues*

46. Against that background I turn to the allegations justified by the Defendants in this action. Although they are addressed separately, there is obviously a considerable degree of overlap between them, in particular in relation to the meanings justified at paragraph 7 (a) to (e) of the Amended Defence. Thus there is a nexus between self-publication, quality, quantity (that is, excessive publication) and lack of peer review.
47. So for example, it follows from Professor Turok's opinion that the Claimant's 58 articles published in CSF in 2008 were not of sufficient quality to merit publication in

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<sup>7</sup> CPR (PD 35, annex, para 4.3)

a reputable scientific journal that the publication of all those articles in CSF was excessive.

*Two important matters relating to the plea of justification: (a) the ethics and norms of scientific publication; and (b) citation issues*

48. There are specific ethical considerations which arise in relation to scientific publishing which are at the core of the issues of peer review, excessive publication and editorial responsibility. In order to put the evidence on these topics into context and explain my conclusions, it is necessary to set out those considerations. For similar reasons it is necessary to set out certain matters concerning citation issues which arise principally, but not exclusively in relation to the case on excessive publication.

*(a) Ethical considerations*

49. There are two sources of evidence which are relevant here. First, the existing publishing guidelines for peer reviewed journals; and second, evidence from Professor Keating about the norms of scientific publishing. In my judgment, this evidence sets out the appropriate standards against which the Claimant's conduct at CSF should be judged.

*Publishing Guidelines*

50. I have been referred to two particular sets of publishing guidelines by the Defendants at trial. First, those produced by the Committee on Publication Ethics, or COPE. COPE is an independent, respected body which provides guidelines specifically for peer reviewed journals. Its guidelines were referred to in the Article. Second, those produced by Elsevier, CSF's own publisher. The guidelines encapsulate the norms of scientific publishing and explain why those norms matter.

51. Elsevier's published guidelines state in part as follows:

"The publication of an article in a peer-reviewed journal is an essential building block in the development of a coherent and respected network of knowledge. It is a direct reflection of the quality of the work of the authors and the institutions that support them. Peer-reviewed articles support and embody the scientific method. It is therefore important to agree upon standards of expected ethical behaviour for all parties involved in the act of publishing: the author, the journal editor, the peer reviewer, the publisher and the society of society-owned or sponsored journals. An important role of the publisher is support for the extensive efforts of journal editors"

52. Under the heading "Duties of Reviewers Contribution to Editorial Decisions" Elsevier's guidelines also deal with the specific responsibilities of editors. They state:

"Peer review assists the editor in making editorial decisions and through the editorial communications with the author may also

assist the author in improving the paper. Peer review is an essential component of formal scholarly communication, and lies at the heart of the scientific method. Elsevier shares the view of many that all scholars who wish to contribute to publications have an obligation to do a fair share of reviewing."

53. The central role played by the Editor-in-Chief in ensuring the integrity of the peer-review process is emphasised by both the COPE and Elsevier guidelines. Each begins with the general duties and responsibilities of editors, and specifically addresses the potential problems which might arise in the context of a conflict of interest. The COPE guidelines state that editors must:

"[A]dopt suitable policies for handling submissions from themselves, employees or members of the editorial board to ensure unbiased review (and have these set out in writing)."

54. Similarly, in a section headed "*Disclosure and conflicts of interest*" the Elsevier guidelines state that:

"Editors should recuse themselves (i.e. should ask a co-editor, associate editor or other member of the editorial board instead to review and consider) from considering manuscripts in which they have conflicts of interests resulting from competitive, collaborative or other relationships or connections with any of the authors, companies or (possibly) institutions connected to the papers."

55. A further important feature is transparency, as is emphasised in the COPE guidelines where it is said there should be a published description of the peer review process.

*The norms of scientific publishing*

56. Professor Keating identified the norms of ethical scientific publishing in peer reviewed journals with authority and clarity. His evidence was not the subject of discernable challenge as I have said and is obviously correct. Though the Claimant sought to cast aspersions on Professor Keating's bona fides in his closing submissions, he certainly did not do so when cross-examining him, describing him for example, as "*a good man*" and a "*top man*". I will set out nevertheless the extent and source of his expertise because of the central significance of his evidence, italicising the most significant features.
57. I shall refer to some parts of Professor Keating's evidence later on in this judgment. But I should say that I accept his central conclusions to which I have referred at paragraph 36 above. First, there were no features of CSF that meant the editorial norms he described would not apply to CSF, or would apply differently to it; second,

even accepting the Claimant's evidence at face value, the Claimant's editorial practices fell far short of what was appropriate; and third, that the safeguards he would consider *essential* when an Editor submits an article to his or her own journal were not in place at CSF.

58. Professor Keating's opinions are based on his considerable experience both as an academic with responsibility for scientific ethics and as an Editor-in-Chief of a scientific peer-reviewed journal; and also on bibliometric comparisons between CSF and other journals.
59. He is currently the Professor of Mathematical Physics and Dean of Science at the University of Bristol. As the Dean of Science he has overall managerial responsibility for Faculty of Science at the University of Bristol which includes the Schools of Biology, Chemistry, Earth Sciences, Experimental Psychology, Geographical Sciences, Mathematics and Physics as well as the Interface Analysis Centre. His primary role as Dean is to provide academic leadership. This includes responsibility for scientific ethics as a member of the Faculty Ethics Committee. He is a Fellow of the Institute of Physics, and of the Royal Society. In 2010 he was awarded the London Mathematical Society's Frolich Prize for his research. His specific areas of expertise are in Quantum Chaos (the study of the quantum mechanical manifestations of chaos in classical mechanics), Random Matrix Theory and Number Theory. He has published 109 papers and review articles since 1987, including 89 in peer reviewed journals. Professor Keating was a member of the Applied Mathematics Panel in the national UK Research Assessment Exercise in 2008. In that capacity, he was responsible for assessing research in the areas of his expertise, broadly Mathematical/Theoretical Physics and Nonlinear Dynamics carried out in the UK in the period 2001 to 2008. This involved assessing the quality of papers written by researchers working in such areas as quantum mechanics, nonlinear dynamics and chaos theory.
60. Since 2004 Professor Keating has been the joint Editor-in-Chief of the journal *Nonlinearity*, published jointly by the Institute of Physics Publishing, and the London Mathematical Society. In general terms, it covers nonlinear mathematics and its application to the biological and physical sciences. Its scope is thus broadly similar to that of CSF, though much more focused on mathematical aspects. Before becoming the joint Editor-in-Chief of *Nonlinearity*, Professor Keating had been a member of its Editorial Board since 1997. As joint Editor-in-Chief he has overall responsibility for the scientific quality and reputation of the journal. This includes deciding which papers are accepted for publication and which are rejected, and selecting people to sit on the Editorial Board. The administration of the journal is carried out by the Institute of Physics Publishing. Professor Keating also serves on the Editorial Boards of (i) the *Journal of Mathematical Physics*, published by the American Institute of Physics where he has been on the Board since 2007; and (ii) the *Applied Mathematics Research Express*, published by the Oxford University Press, where he has been on the Board since 2003. From 1996 to 2004 he was on the Editorial Board of *Journal of Physics A*, published by the Institute of Physics Publishing, which covers Mathematical and Theoretical Physics, including nonlinear dynamics and quantum mechanics.

61. Professor Keating said in his opinion the COPE Code of Conduct, the COPE Guidelines and the Elsevier publishing guidelines correctly state the universally accepted principles and standards which apply to scientific publishing.

*The peer review system generally*

62. Professor Keating's evidence as to the norms of the peer review system which should apply generally, and to the field in which CSF was publishing was this.
63. In peer review journals, manuscripts submitted for publication should be assessed by *independent referees*. It is the norm in the area covered by CSF for referees to remain *anonymous*, except in exceptional circumstances and then only with the explicit consent of the referee. Anonymity is important and is a practice maintained *by most leading journals* to encourage complete frankness in their reports and maintain their independence. The referees chosen should be *unbiased*; and there should be *no conflict of interest, actual or potential*. For example, they should not be students or close collaborators of the author. A referee should decline to assess a manuscript if a conflict of interest exists.
64. In peer reviewed journals, decisions to publish are based on the referees' reports. The Editor makes the final decision based on the referees report. There are a number of possibilities: the paper might be rejected outright; the author might be asked to make revisions (in which case, the revised paper is often sent back to the referees); the paper is simply published. Referee reports are usually relayed to the author verbatim, except where minor editing is required to avoid revealing the identity of the referee or (rarely) to remove particularly vitriolic or insensitive remarks. It is not the practice, of any journal Professor Keating publishes in or edits, for referee reports to be summarised or systematically edited.
65. Most journals would identify *two or three referees for each manuscript*. In some journals the referees are chosen by a member of the Editorial Board. In others they are chosen from a centrally managed database by persons in the publishing office. Most journals consider it important to *vary the choice of referees used* for different papers by the same author to avoid the obvious problem (particularly in a very specialised field) of small cliques of authors who consistently review each other's papers. This reduces the possible development of small cliques of scientists biased for or against the work of others in the clique, and who therefore systematically accept or reject each other's papers.
66. *Referee reports* can vary in length from a paragraph or two to several pages. They usually set out which results in the paper under review are original, the extent to which the results are interesting and significant, an overall assessment of the quality of the paper in the context of the standards identified by the journal, a list of technical or scientific problems with the manuscript, a list of suggested revisions and often, a list of questions for the author relating to issues the referee has not understood. Referees are usually advised not to discuss papers directly with the author. It would compromise anonymity, could compromise independence and can lead to confusion.
67. Refereeing is not just a matter of determining correctness, but of *soundness and overall importance* which is why manuscripts submitted by Editors – who would normally be expected to take the final decision on whether a paper is sufficiently



significant to merit publication – have to be dealt with particularly carefully. If referees are genuine leaders in the field and are chosen carefully to provide independent expert advice, they usually have much better judgment than the author, in determining the overall originality and significance of a paper.

68. If peer review is carried out rigorously it improves standards considerably. This is why all leading scientific journals consider it important to adopt the process, despite the expense and effort involved.
69. Practices vary in relation to the receipt of papers. Some journals have receiving or handling editors to whom papers can be submitted; they might choose the referees, and correspond directly with the authors and the referees. In journals that publish a significant number of papers, it is unusual for the Editor-in-Chief to act in this capacity because of the potential for a conflict of interest to arise if the person taking the final decision to accept or reject the paper also selected the referees. Many journals will allow members of the Editorial Board to pass on the papers for submission to a central administrative office. Some journals ask Editorial Board Members to suggest referees and then to comment on the referees' reports, with the final decision whether or not to accept the referees' recommendations being taken by the Editor-in-Chief.
70. Most, if not all major journals use a computerised system, an "electronic submissions system" (ESS) *to maintain the transparency and integrity of the peer-review process*. An ESS does not select referees, or referee papers or make judgments: it is simply an administrative tool which logs correspondence with authors and referees. The use of an ESS is widely viewed as significantly enhancing the peer review process and what might be called quality control for a number of reasons. Each paper submitted has a clear evidence trail with relevant correspondence and referee reports collected together. The ESS makes it easier to cross-correlate authors and referees to avoid conflicts of interest and the establishment of 'cliques'. It also allows Editors to identify referees who might be systematically tougher or more lenient in their assessments; and also trends, such as authors whose papers are consistently either accepted or rejected.

*Standards for editorial practice in scientific publishing*

71. On the issue of peer review and *self-publication* Professor Keating said that the Editor-in-Chief is the embodiment of the standards and reputation of his or her journal. It is therefore extremely important that he or she is above reproach when it comes to academic standards. It is acceptable for an Editor-in-Chief to publish in his or her own journal; but since the Editor-in-Chief has overall responsibility for deciding which articles are accepted for publication, there should be no question but that the *very highest standards of independent peer-review* are applied when the editor's own papers are considered for publication to avoid an (obvious) *conflict of interest* arising. *Excessive self-publication is generally considered to be unethical: most Editors-in-Chief publish their own papers sparingly, if at all, and would publish only their best works in their own journal so their papers would be above the quality threshold.*

72. So:
- i) The Editor-in-Chief *should not select the referees* for his or her own papers and the referees' *identities should be kept strictly confidential* (i.e. not divulged to him or her);
  - ii) The final publication decision, based on the referees' reports, should be clearly and explicitly delegated to another *independent member of the Editorial Board with no conflict of interest* (that is, not for example someone who collaborates with the Editor-in-Chief or whose judgement might be influenced by a close working or personal relationship with him or her);
  - iii) *The choice of the referees* should ideally be made by this Board member, or someone with *no conflict of interest* in the matter; and
  - iv) The referees themselves should have no conflict of interest either. They *should not for example be collaborators, former students or close colleagues of the Editor-in-Chief*, nor should they be people known to be uncritically sympathetic to the Editor-in-Chief. The referees should be chosen for their ability to provide an *independent, unbiased assessment*.
73. The Editor plays an important role in selecting papers for publication. Editors will look at the paper under review and the referees' report and form a judgement about its correctness and quality.
74. *But it is never acceptable for an Editor to select papers for publication because they cite the journal to which they have been submitted. Nor is it ever acceptable to direct contributors to cite other papers published in that journal unless those papers are of direct relevance to the author's paper (i.e. if the author should have cited them irrespective of where they were published); or to identify papers that the author should cite on the grounds they are in a given journal.* The key issue is to identify relevant results published previously in the literature irrespective of where, or by whom those results were published.

*(b) Citation issues*

75. As I have indicated, the evidence on these matters comes from Ms McVeigh and, to a lesser extent, from Professor Keating. Ms McVeigh is currently employed as the Director of JCR and Bibliographic Policy for Thomson Reuters in the IP & Science Division, a leading provider of scholarly bibliographic and bibliometric data. In that role she supervises the production and quality control of the JCR citation metrics, as well as the policy for indexing all materials for the Thomson Reuters citation index products, including Web of Science. She has held this position for 1 ½ years; for the previous 4 years she was Senior Manager, JCR (the Journal Citation Reports: see paragraph 78 below) and Bibliographic Policy. She has worked in detail with Thomson Reuters' citation data for over 16 years, beginning in 1995 and has extensive familiarity with the publication and citation practices of highly prolific, successful, and/or influential scientists in a wide variety of subject areas. She also worked on analysing and verifying the accuracy of Thomson Reuters' algorithms developed for the automated clustering of multiple works by the same author. From 2000 to the present day, she has worked on the JCR data and production, which

means she is extremely familiar with the content, patterns and compilation of journal-level citation records. She has directly supervised and participated in the production of the JCR since 2006; this would have included the production of 2005, 2006, 2007, 2008 and 2009 JCR data. She has also served as a peer reviewer for scholarly articles on citation data.

76. She outlined some of the essential terms relevant here, and the methods or systems used to establish citation issues in scientific publishing. (I should add the JCR (see paragraph 78 below) was the source of the Defendants' citation data for the purposes of their defence in this action). Her evidence and that of Professor Keating, on citation issues was as follows.
77. *Journal Impact Factor* (or Impact Factor (IF)) is a long-established and internationally used standard for the assessment of the citation impact of particular journals. It is compiled annually by Thomson Reuters, a leading provider of scholarly bibliographic and bibliometric data for some 9,000 journals, and is based on citations in some 12,000 journals and 8-10,000 proceedings volumes.
78. The database containing this information is known as the *Journal Citation Reports* ('JCR') previously known as the Institute of Scientific Information or ISI Web of Knowledge or Web of Science. Over 20,000 publications and 45 million cited references are analysed by Thomson Reuters during JCR production. The mathematics of the metric are simple and publicly available but the data is specialised
79. JCR is to be contrasted with Google Scholar. Google Scholar, the source of certain data used by the Claimant in this action, is a specialised free search engine at <http://scholar.google.com>, rather than a database. It is therefore an inherently changeable resource. In Professor Keating's opinion, citation statistics from Google Scholar are inherently misleading because Google Scholar does not take into account citation pattern across time.
80. The IF for a particular journal in a particular year, is calculated by taking all the citations appearing in articles published in that year (in any journal indexed by the JCR) which are references to articles published in that particular journal in the two preceding years, and dividing that figure by the number of articles published in the 2 preceding years. So, for example, to obtain the 2008 IF for CSF, a survey is done of all the published articles dated 2008 indexed in the JCR for references to articles published in CSF in 2006 and 2007, and the number of those references is divided by the number of articles published in CSF in 2006 and 2007.
81. It is important to note that a high IF is potentially very valuable to a journal and to scientists who may choose to publish in it. It gives an indication of how much attention an article published in a particular journal is likely to receive from the scholarly community. It is also therefore a "*tool for assessing the relative importance of a journal in its surrounding literature*" as Ms McVeigh said; or an "*indication of the relative success, or impact, of the articles in a given journal*" as Professor Keating described it.
82. He said the importance that is placed on a journal's IF varies between disciplines and institutions. It is certainly regarded in some quarters as an indicator of the quality of articles in a journal, which may cause scientists to seek to publish in a journal with a

high IF, or university librarians to choose to subscribe to a high-IF journal. Publishers therefore have a financial interest in a high IF.

83. It is also important to note that the Claimant himself was obviously well-aware of the importance of a journal's IF. In a letter of complaint for example, about changes made to the Board of CSF without his approval, sent to Alison Collett of Elsevier and copied to Dr Charon Duermeijer also of Elsevier, dated 21 July 2007 he said this:

“I worked for 15 years to establish C&F (sic) as the leading periodical on the subject with the highest impact factor in all mathematical journals of Elsevier. Only another Journal published outside Elsevier has an impact factor of 4.5. This is the Journal of Prof. Ji-Huan He who I was able to persuade to give us a hand In CS&F.”

84. The usefulness of an IF may be significantly undermined in two situations in particular. First, if it is based on citations which appear in the journal itself (“*Journal Self-Citation*” in Ms McVeigh’s terminology), then it ceases to say anything about the importance of the journal in the field as a whole – it merely indicates a group of isolated writers who may have little or no significance to the wider scientific community. For this reason Thomson Reuters will remove from display in the JCR any journal where Journal Self-Citation is so extreme as to have this radically distorting effect. Second, if the citations which contribute to the IF are not academically justified (that is, they do not serve a legitimate purpose in the paper in which they appear, or that paper is itself chosen for publication on grounds other than properly assessed academic merit) then they will falsely inflate the IF of the journal and, again, give a misleading picture of the journal’s relevance in the wider scientific world.
85. This case does not in fact directly concern Journal Self-Citation, but two subsets of it, called, in Ms McVeigh’s terminology “*Internal Self-Reference*” and “*Journal to Editor Self-Citation*”.
86. “*Internal Self-Reference*” (or, as it is described in the Amended Defence, “personal or author self-citation”) occurs where an author publishes a paper in a journal in the course of which he cites his own work previously published in that same journal. “*Journal to Editor Self-Citation*” occurs where an author publishing a paper in a journal cites a work published in that same journal by the journal’s editor. Journal to Editor Self-Citation therefore includes, but is wider than, Internal Self-Reference by an editor. The pleaded case on the inflationary effect of citation is limited to Internal Self-Citation and Journal-to-Editor Self-Citation: the effect of both Internal Self-Reference and Journal to Editor Self-Citation on a journal’s IF can be demonstrated by removing such citations and recalculating the journal’s IF.
87. With those matters in mind, I turn then to the specific allegations justified by the Defendants.

*Lucas-Box (a): The Claimant abused his position as Editor-in-Chief by publishing in CSF an excessive number of articles written by himself.*

88. The Defendants rely on a number of strands of evidence in support of this part of their case: the first, is what may be described as the numerical case; the second comes from Professor Turok's evidence on the quality and repetitiveness of the Claimant's papers published in CSF in 2008, and the third comes from Professor Keating's evidence on the norms which apply to scientific publishing to the *Lucas- Box meaning (a)* to which I have already referred. This evidence provides a compelling case that this allegation is true.

*The numerical position on self-publication*

89. Though the defence relied on figures for the period 1991 to 2008 (the total period of the Claimant's editorship), the analysis provided by Ms McVeigh and relied on by the Defendants at trial was limited to the years 1993 to 2008 as 1993 was the year in which Thomson Reuters began including CSF in its database. Differences caused by the exclusion of 1991 to 1992 were minimal.

90. The data shows that between 1993 and 2008 the Claimant published 290 articles in CSF of which he was the author. In 2008 alone, he published 58 scholarly works in CSF. The next most frequently recurring author in CSF in 2008 was Dr Marek-Crnjac who published (only) 9 papers.

91. The sheer volume of self-publication is striking in itself but as Mr Caldecott submits, the truly excessive rate of self-publication "leaps out" when a comparison is drawn with the self-publication practices of editors of comparable journals.

92. A comparison table neatly illustrates the point using comparators which Professor Keating confirmed (with the possible exception of *Annals of Mathematics*) are appropriate.

93. I set out in a footnote, Professor Keating's broad description of these comparators,<sup>8</sup> including in brackets, their international ranking by the Excellence in Research for Australia (ERA) programme of the Australian Research Council,<sup>9</sup> a comprehensive international ranking of the quality of academic journals, which covers over 20,000 peer-reviewed journals.

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<sup>8</sup> Communications in Mathematical Physics, the premier journal covering the broad spectrum of Mathematical Physics (A\*); Physical Review Letters, arguably the premier journal covering the whole of Physics: (A\*); Annals of Physics, covering the broad spectrum of Physics: (A); Nuclear Physics B covering quantum field theory and high-energy physics (A\*); Physical Review D, similar to Nuclear Physics B (A).

<sup>9</sup> It assigns each journal to a tier as follows: A\* - one of the best in the field, or sub-field; A – very high quality; B - - solid, though not outstanding, and C – does not meet the criteria of the higher tiers. Most journals were, as at February 2010 classified as A, B or C, with a small number classified as A\*. For the methodology underpinning these classifications see the ERA website at <http://www.arc.gov.au/era>.

***Table of Self-Publication Rates***

<b>Journal</b>	<i>Chaos Solitons and Fractals</i>	<i>Communications in Mathematical physics</i>	<i>Annals of Mathematics</i>	<i>Physical Review Letters</i>	<i>Annals of Physics</i>	<i>Nuclear Physics B</i>	<i>Nuclear Physics B</i>	<i>Physical Review D</i>
<b>Name</b>	Claimant	M Aizenman	No single editor or equivalent	Jack Sandweiss	Frank Wilczek	Hiroshi Ooguri	Robert Dijkgraaf	Erick J. Weinberg
<b>Title</b>	Editor-in-Chief	Editor-in-Chief	N/A	Editor	Editor-in-Chief	Supervisory Editor	Supervisory Editor	Editor
<b>Year Appointed</b>	1991	2001	N/A	1987	2001	1998	1994	1996
<b>Total articles from that year to end 2008 (approx)</b>	333	13	N/A	144	87	56	29	22
<b>No of those articles appearing in journal (approx)</b>	290	5	N/A	51	7	16	12	18
<b>No of those articles appearing in other journals (approx)</b>	43	8	N/A	93	80	40	17	4
<b>%</b>	87.09%	38.46%	N/A	35.42%	8.05%	28.57%	41.38%	81.82%

94. It can be seen from this table, that in absolute numbers, the Claimant's self-publication record dwarfs that of the closest contender (Sandweiss) who had been in post longer. He published approximately half the number of papers of the Claimant across a time-span that was 7 years longer. Moreover, unlike the Claimant's 58 articles, many of Sandweiss's self-published papers were co-authored with a number of listed co-authors, and on occasion with as many as 350 co-authors.
95. The Claimant's self-publication rate is also excessive when considered as a proportion of his overall published output. Between 1993 to 2008 the Claimant published 330 articles in which he was listed as author of which 290 (or approximately 87 per cent) were published in CSF. The percentage is the same if only the Claimant's scholarly works are considered; that is, between 1993 and 2008 the Claimant published 300 scholarly works, 262 (or approximately 87 per cent of which) appeared in CSF.
96. Only Weinberg (Physical Review D) comes close (81.2 percent) but he published very few papers overall (only 22). The other comparator editors all published less than 32 per cent of their work in their own journals.
97. Professor Keating said he knew of no example that came close to the Claimant's record in this respect. During his own time as Editor-in-Chief of Nonlinearity, the journal has published only one paper in which he was a co-author. He regarded the

extent of the Claimant's publication of his own articles in CSF over the period of his editorship *excessive and inappropriate*, both in terms of the total number of papers, and in terms of the fraction of his total output over the periods in question. It is worth reiterating what he said when dealing with the norms of scientific publishing: "*excessive self-publication is generally considered to be unethical.*" Professor Keating did not know of any other theoretical physicist, or researcher in the area of theoretical nonlinear dynamics, publishing work of high quality at this rate (nearly 20 articles per year over a 17 year period), let alone any well-regarded journal where there was such a rate of self publication over such a long period by its Editor-in-Chief.

98. The Claimant did not dispute the figures, nor did he advance any positive case that the Defendants' chosen comparators were not appropriate. In cross-examination of QS he suggested that his self-publication record should be compared with that of the editor of the International Journal of Bifurcation and Chaos (IJBC), Leon Chua, although he adduced no evidence to support that assertion.
99. In the event, the Defendants, through Ms McVeigh were able to check the position, and demonstrated that this particular comparison does not assist him on the facts. Leon Chua published 557 works in total, 137 of them (24.6 percent) in IJBC, and 124 of the 137 were classified as scholarly works. This was not a precise comparator; but adopting the same criteria to the Claimant as Ms McVeigh did to Chua, the evidence is that the Claimant published 411 works in total during that period, with 307 (74.7 percent) appearing in CSF. It is highly unlikely that filtering out non-scholarly works and limiting the data range would make any meaningful difference.
100. What then was the Claimant's explanation for this rate of self-publication? None was pleaded, but in his evidence the Claimant gave two different and contradictory explanations for the rate of self-publication in 2008. In my view neither provides an acceptable explanation for the rate of self-publication which occurred.
101. First, the Claimant said the 58 papers published in 2008 represented 4 years work jammed in to the 2008 editions by Elsevier. There is no evidence to corroborate this assertion which one would expect to have been pleaded if true. Even if true however, such an explanation might go some way to explain the level of publication in 2008, but it would not diminish the overall (and excessive) level of publication in comparison to that of other journal editors.
102. Second, he said the 58 papers were pushed in by himself in response to his work having been "*high-jacked*" by others. This does not make the editorial practice acceptable; but in any event does not provide any explanation for the overall level of self-publication.
103. He gave a third explanation in his closing submissions viz that he had "*no control over what or when any article was published in the journal from the beginning of 2008.*" This explanation is not his pleaded case, nor is it supported by evidence.
104. Though the Claimant also referred to the statistics for the number of his papers published as a proportion of total papers published by CSF, the relevant statistics when it comes to assessing the Claimant's conduct as an editor are the numbers in absolute terms and the proportion they represent of the Claimant's published output overall.

*The poor quality of the papers published*

105. The quality of the articles in question is relevant both to whether publication of them was excessive, and to whether the Claimant abused his position as Editor-in-Chief of CSF by publishing them in the quantity he did. The question of quality is addressed in detail in relation to *Lucas-Box* meaning (b); but for present purposes I need only say that I accept Professor Turok's opinion that the quality of the Claimant's 58 articles published in CSF in 2008 was such that they would not have been published by any reputable peer reviewed journal. This in itself is strongly supportive of the case that the Claimant abused his position by self-publishing them in CSF.

*Whether the Claimant's self-publication practices complied with the norms of scientific publishing*

106. It is apparent that the Claimant had little if any interest in the norms of scientific publishing or the ethical considerations which underpinned them. He said in evidence that he had not seen the Elsevier guidelines, but admitted he would not have followed them even if he had. Not surprisingly perhaps in those circumstances, his self-publication practices did not begin to comply with those norms of scientific publishing as they plainly should have done.
107. The evidence establishes that none of necessary safeguards were in place, let alone the stringent safeguards which should apply for the reasons Professor Keating explained when an editor publishes in his own journal (something which as he said, most editors do so sparingly, if at all).
108. There is nothing for example to suggest that CSF had any information for readers or internal policies setting out CSF's approach to the issue of self-publication or that the process of handling the refereeing process and making the ultimate decision on publication, were delegated to another member of the Editorial Board. It is not the case either that "*the very highest standards of independent peer review*" were applied. On the contrary, for the reasons given at paragraph 165 and following below, it is apparent that the Claimant's papers were not peer reviewed at all.
109. My conclusions on this limb of the justification defence would not be different even if I accepted the Claimant's case on the procedures which he claimed were followed at CSF. His case was that the peer reviewers of his articles were selected by Ms Boehm. She however was an administrator, not a member of the Editorial Board of CSF and has no scientific qualifications. Moreover, according to his evidence, the Claimant did not then delegate the decision whether to publish his papers to an independent member of the Editorial Board. He made the decision himself (a decision he described as "*agonising*").
110. In his witness statement, the Claimant asserted that CSF is "*my own journal which I established and edited and which was in a sense the official organ of an unconventional way of thinking and doing research identified completely by me*". In cross-examination of Professor Keating, he described it as "*Mohamed's journal*". In his evidence, the Claimant also appeared to suggest that self-publication without



recourse to the recommended safeguards is acceptable so long as it is clear a journal exists to promote the works and theories of editor.

111. These views were described by Professor Keating as “*most unusual*”; his sense being that CSF may have been run in a very different way to most if not all other journals covering this subject area. In my opinion these views are not only unusual, they lie at the core of the Claimant’s deeply flawed approach to scientific publishing which as I find, has been demonstrated in this case, and there are a number of serious objections to them.
112. First, the case that this was ‘his journal’, in effect, to which the ordinary rules did not apply, is not open to the Claimant on the facts. Critically CSF did not present itself or purport to be “*the official organ of El-Naschie’s view of science.*” On the contrary, it purported to be a scientific journal published under the auspices of respectable scientific publisher with the ethical guidelines that “*that aspired to the widely held objective standards of scientific publishing*” as Professor Keating put it, and with submissions for publication being assessed for publication on their merits see for example CSF’s first editorial (under the Claimant’s editorship), or what it has said about its aims and scopes. This after all was the impression sought to be given to *Nature* and its readers in the email signed by P. Cooper and referred to in the Article itself.
113. I should mention here a related point made by in the context of the issue of peer review, by Professor Garnet Ord of the Mathematics Department of Ryerson University in Toronto and one of the Claimant’s witnesses. He described criticisms of the Claimant with regard to peer review issues, as “*completely disingenuous*” on the footing that a true peer group did not exist with really new ideas or “*science under construction*” as he described it; so that peer review was not feasible for someone like the Claimant with, in his view, his breadth of knowledge and ability to synthesise new ideas.
114. This argument does not assist the Claimant on the facts either. We are not living in the age of Galileo. Scientists or those with a keen interest in science as informed amateurs are free to publish and thus disseminate their ideas to the outside world: and in the age of the internet, there are many platforms by which they can do so. But what they cannot do is present their findings as though they have been through a proper peer review process, if that is not the case: indeed it is of fundamental importance to the integrity of scientific publishing that they should not be permitted to do so.
115. Second, as Professor Keating said, a scientific journal is, or should be a place where scientists can publish their results, rather than a forum for the Editor’s personal philosophy; there should be a clear separation between objective scientific publishing and opinion- led journalism and none was in place here.
116. There is a third fundamental objection to the Claimant’s argument that CSF was, his own journal, and thus, in effect, that the rules did not apply to him. As Mr Caldecott submitted, and as is apparent from the ethical guidelines to which I have referred, scientific journals constitute a body of work on which the scientific community as a whole relies. The extent to which an author is represented in this body of scientific literature can have important consequences for their academic career. Authors who wish to make a contribution to the scholarly record are entitled to a level playing field.

No doubt this is why Professor Keating says: “*Normally Editors consider themselves to be custodians of a journal that belongs to the community, rather than the journal they edit being an “organ” that is “completely identified” with them*”.

117. The evidence in my judgment is clear. None of the necessary procedures which should have existed were in place at CSF, let alone the stringent safeguards that are necessary if self-publication is to be contemplated, and which are essential to prevent an editor abusing his position to self-publish. The Claimant’s self-publication in CSF was excessive and unwarranted and amounted to an abuse of his position as Editor-in-Chief.
118. Ethical guidelines are there to protect the integrity of the process and the trust reposed in it by the scientific and wider community. It is of the highest public interest that they should be adhered to by journals that purport to engage in the process of peer review. As the Defendants submit, the Claimant ought to have run CSF in a way which promoted and safeguarded the integrity of the academic record. Instead he was substantially concerned with promoting himself and his theories.

*Lucas-Box (b) The Claimant’s articles tended to be of poor quality.*

119. This aspect of the defence of justification as I have already said is confined for reasons of proportionality to the articles published by the Claimant in CSF during 2008, and is concerned with the quality of the Claimant’s papers according to accepted norms of clarity, accuracy and logical reasoning which should apply to a paper in this field published in any reputable scientific journal. It is not concerned with the correctness or validity or otherwise of any theory espoused by the Claimant, matters which, given the subject-matter of them, might well not be justiciable in any event.
120. Through Professor Turok, it is said by the Defendants that on analysis, the 58 papers or articles contained the following defects:
  - i) A failure to define terminology and concepts, including in particular a failure to present the principles and equations of “E-infinity theory” and the predictions which are said to be deduced from it;
  - ii) Strongly expressed conclusions, unsupported by any, or any intelligible process of logical reasoning; in particular, the repeated unexplained reliance on numerical coincidences in support of the assertion that the Claimant’s “E-infinity theory” is correct;
  - iii) Statements which are meaningless or obscure, even to a readers with expertise in the field of theoretical physics;
  - iv) Statements which are simply wrong;
  - v) Elementary errors of spelling and grammar;
  - vi) A lack of any, or any substantial, contribution of new knowledge to the field;
  - vii) An excessive degree of citation of other articles written or co-written by the Claimant, in particular in order to justify assertions which should have been

supported by self-contained argument or references to the work of independent authors (the articles published by the Claimant in CSF in 2008 contained approximately 301 citations of his own articles in CSF, including citations of “in press” articles: i.e. those articles which were due to be, but which had not at the material time, been formally published);

viii) The use of those articles to advertise other articles by the Claimant.

121. In my judgment, for the reasons explained by Professor Turok, these criticisms were well-founded.
122. Some of the points made were relatively technical; some were not; and in view of the complexity of the scientific topics being dealt with, Professor Turok confined his criticisms to those that are capable of being conveyed to, and understood by a layperson. But to paraphrase Samuel Johnson, you do not have to be a carpenter to see when the legs of a table are uneven, or even to see that it has no legs at all.
123. Since Professor Turok’s opinions, like those of Professor Keating, are central to my resolution of these matters, and because the Claimant suggests that Professor Turok does not have the necessary expertise in relation to the matters on which he gave evidence. It is necessary to say something about Professor Turok’s background and qualifications.
124. Professor Turok is currently the Director of the Perimeter Institute for Theoretical Physics in Ontario, Canada. It was founded in 1999 and is one of the world’s leading centres in the field of fundamental theoretical physics. He is responsible for developing and implementing the overall scientific and strategic direction of the Perimeter Institute, including determining which fields of research in Theoretical Physics are the most promising and important for the Perimeter Institute to support.
125. Some of his more recent qualifications and experience are as follows. He was appointed a full Professor at Princeton University in 1995, having been an Associate Professor of Astrophysical Sciences there since 1993. In 1996 he was appointed to the Chair of Mathematical Physics, one of the most senior scientific positions in the Department of Applied Mathematics and Theoretical Physics (DAMTP) at Cambridge University. In October 2008 he became the Director of the Perimeter Institute. He has been awarded the James Maxwell Medal of the UK Institute of Physics and the Sloan and Packard Foundation Fellowship for his work in theoretical physics. He has published over 150 papers in the course of his career: principally in the field of applied mathematics and theoretical physics in the following journals: Physical Review D, Physical Review Letters, Nuclear Physics B, Physics Letters B and also in the Astrophysical Journal, Science and Nature magazines.
126. Professor Turok was an impressive witness in my view, who gave measured and careful evidence, including during cross-examination by the Claimant.
127. He said the general field in which the Claimant writes is fundamental theoretical physics (‘the Field’). The essential goal of the Field is to determine the basic laws which govern the universe and its constituents, and to work out their contents. This is an extremely technical and complicated area of science requiring many years of study to understand, even at a basic level. Nonetheless, in general terms a paper published

in the Field should be comprehensibly written with clear reasoning, logical arguments, well-stated assumptions and accurate translations of those assumptions and predictions about the physical world.

128. Further, any exposition of a theory (a set of mathematical principles from which claimed results and predictions may be deduced) should include a clear statement of the principles and rules of reasoning which are to be followed. There are some theories in the Field that have become so well known and widely accepted (such as the Yangs-Mills theory or the Standard Model) that they can be referred to in papers without the need to provide a detailed explanation or exposition of it. The position is different however where a theory is not well-known or widely accepted. In that event, a paper referring to it should contain a clear explanation of how the theory has been constructed and what it claims to prove.
129. Many of the 58 papers examined by Professor Turok concerned the Claimant's proposed unified theory of fundamental physics, his "E-Infinity theory." Professor Turok as would be expected is aware of significant developments in the Field, not least because of the positions he has held at Cambridge and at the Perimeter Institute. He had not heard of the "E-infinity theory" before this action. In his opinion, it has gained little recognition or support in the Field, and none at any of the leading centres. Thus any paper dealing with it should in his view, have contained a clear and self-contained exposition of the theory and its principal claims.
130. For ease of reference, the titles of the Claimant's 58 articles or papers published in CSF in 2008 are set out in Schedule 1 to this judgment and are referred to from now on by their numbers in the Schedule.<sup>10</sup> Professor Turok's opinions on the topics identified at paragraph 120 were as follows.
- i) A failure to define terminology and concepts, including in particular a failure to present the principles and equations of "E-infinity theory" and the predictions which are said to be deduced from it*
131. The "E-infinity theory", which is claimed to be a new fundamental formulation of high energy physics, is a consistent or persistent theme of the Claimant's 58 articles but is not clearly defined or explained in any them. That is, the principles and equations of the theory and predictions which are said to be deduced from it are not presented logically or coherently. In particular, the 58 articles do not tell the reader whether the "E-infinity theory" has actually been constructed (i.e. that there is a set of mathematical principles or rules from which the claimed results have been deduced) because none of the underlying principles and equations of the "E-infinity theory" are presented nor are its predictions deduced.
132. Instead, the following style of argument is adopted: a series of numbers is quoted from disparate sources: the mathematical theory of fractal sets, the spectrum of string theory, the dimensions of various symmetry groups, the fundamental coupling constants in particle physics and their running with energy and even experimental data taken on the properties of knots in ropes. There is then a claim there are remarkable numerical coincidences between all these numbers, and that these coincidences point

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<sup>10</sup> The Claimant initially disputed that one of the papers (paper 19) appeared in 2008, but eventually accepted that it did so, and the reference to 2007 at the head of the paper is a misprint.

to the correctness of the “E-infinity theory”. But after reading all 58 papers, Professor Turok was still none the wiser as to what the Claimant’s “E-infinity theory” actually is. The following are examples.

133. Article 11’s title is “From *E*-eight to *E*-infinity” but there is no account of what *E*-infinity actually means. At the very end of section 1 of the article the reader is told that the paper’s final conclusion will involve “*E*-infinity theory”. In the event however, there is simply no mention of “E-infinity theory” in the final section of the article and its conclusion.
134. Article 46 also contains references to “E-infinity theory”. However it is extremely difficult to follow: it simply quotes mathematical formulae; and then claims these are evidence for the Claimant’s “E-infinity theory”, which, again, is not explained.
135. In Article 7 the Claimant fails to define any of the five quantities in its first five equations, something described by Professor Turok as a basic presentational error.

*ii) Strongly expressed conclusions, unsupported by any, or any intelligible process of logical reasoning; and the repeated unexplained reliance on numerical coincidences in support of the assertion that E-infinity theory is correct*

136. Many of the 58 articles make very big claims, which, if correct, would qualify as major scientific breakthroughs. These claims are made using grandiose language, but are characterised by a lack of logical justification or argument. The following are examples.
137. *Article 7*: This purports to be a mathematical demonstration that the laws of particle physics do indeed imply the confinement of quarks into nucleons and mesons. According to the abstract: “*A simple and short mathematical proof is given for quarks confinement.*” The explanation of why quarks adhere inside protons and neutrons rather than escaping is one of the most important and enduring problems or theoretical puzzles in the Field, the answer to which has been sought with intensity by leading experts for over three decades, such that one of the million dollar Clay Mathematical Prizes has been offered for a proof.<sup>11</sup>
138. Article 7, two pages long, claims to provide it. Yet it does not. The article is poorly written and is impossible for the reader to follow: it consists of equations written using non-standard notation which is not defined (as noted above, the Claimant fails to define any of the five quantities in the first five equations for example) and

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<sup>11</sup> An extract from the Clay Mathematics Institute’s own information is as follows.

“In order to celebrate mathematics in the new millennium, The Clay Mathematics Institute of Cambridge, Massachusetts (CMI) established seven *Prize Problems*. The Prizes were conceived to record some of the most difficult problems with which mathematicians were grappling at the turn of the second millennium; to elevate in the consciousness of the general public the fact that in mathematics, the frontier is still open and abounds in important unsolved problems; to emphasize the importance of working towards a solution of the deepest, most difficult problems; and to recognize achievement in mathematics of historical magnitude...The seven Millennium Prize Problems were chosen by the founding Scientific Advisory Board of CMI, which conferred with leading experts worldwide. The focus of the board was on important classic questions that have resisted solution for many years. Following the decision of the Scientific Advisory Board, the Board of Directors of CMI designated a \$7 million prize fund for the solution to these problems, with \$1 million allocated to the solution of each problem.”

culminates in a jumbled combination of words together with what is best described as ‘name-dropping’ of well-known scientists in the Field. The main body of the article ends with the sentence: “*This demonstrates the confinement of quarks  $U_2$  to phase transition of the topology of spacetime at the Planck energy to that of a Planckian Aether.*” Professor Turok described this statement as ludicrous. The article does not demonstrate anything: it had not even addressed the puzzle in a meaningful way. In the circumstances the final sentence of the article (“*This demonstrates confinement in a most rigorous way...*”) is also wrong. Further, the allusion in this context by the Claimant to certain “gurus” in the field, like ‘t Hooft, Gross and Wilczek is characteristic of the tendency to make a wild claim with an allusion to authority in order to lend credence to it.

139. *Article 11*: As already mentioned, the short but telling point, apparent to any one, is that the abstract states the article reaches a particular conclusion (“...*that the hierarchical  $E_\infty$  is the true average fractal symmetry of E-Infinity theory*”) which, even if it were meaningful, is not mentioned at all in the conclusion section of the paper itself. As Professor Turok said in evidence: “*It is almost as if the abstract was written completely independently of the paper...none of the things mentioned in the abstract were actually discussed in the paper.*”
140. The statement that does then appear in the conclusion (“*Employing the same counting procedure and noting that on this basis 60 elementary particles have been experimentally observed one must be inclined to think that another 9 particles are still missing. It is very likely that at least 5 of the particles will be detected experimentally in the not very distant future [9]*”) is, Professor Turok said, “*very, very hard to make sense of*” given there is no discussion of what the missing particles are, or what their properties might be. No assistance is gained by looking at footnote 9 because it refers to another paper by the Claimant, which has nothing to do with the number of elementary particles. This is but one example of a typical flaw: the papers contain citations which do not support the proposition for which they are cited.
141. *Article 12*: This offers a mathematical derivation of the value of Newton’s gravitational constant in terms of the mass of the proton. This would be a spectacular result if correct and it would solve a longstanding puzzle in the Field. The paper claims to use “*Heterotic string theory*” to obtain the result, but gives a very garbled and incorrect account. Professor Turok searched this article in vain for a derivation of Newton’s constant, but found only a series of odd non-sequiturs.
142. *Article 13*: This offers a set of algebraic equations whose solution allegedly gives the constant of nature. This would also be a spectacular result if correct. The Claimant claims in the introduction to use holography but the article does not use holography at all. In section 2.1 of the article the Claimant writes down a quadratic equation, which is not justified, which is trivial numerology of no significance and which would not be publishable in any serious scientific journal.
143. *Article 54*: This begins with a misinterpretation of the term ‘*instanton*’ (which the Claimant confuses with the objects (*quarks*) which in fact reside inside the instanton. Its most striking defect however, obvious even to a layperson, is that the terms in the various tables presented on the second and third pages of the article are undefined. One table appears to be reporting the results of an experiment in which knots are tied in ropes of various thicknesses and lengths. Professor Turok said: “*I have no idea*

*what knots in rope has to do with particles of the type being discussed in the paper. In fact, if you read the paper there is no relationship explained.”*

144. As for numerical coincidences, I have already referred to Professor Turok’s criticism of the Claimant’s style of argument used to demonstrate the correctness of “E-infinity” theory (quoting a series of numbers and claiming that there are remarkable coincidences between the numbers). He said the difficulty with this argument is that numerical coincidences are frequently just that. For example, one may claim that it is a profound coincidence that  $2\pi$  is approximately the product of the two lowest prime numbers, or that the fine structure constant is approximately  $1/137$  which is approximately the inverse of  $17 \times 2^3$  plus one. It is hard to tell however from the 58 articles whether the numerical coincidences claimed by the Claimant are any more significant than that.
145. Another persistent feature of the 58 articles is the lack of logical argument substantiating the claims made. For example:
- i) Article 11 ends with a prediction that 5 of the elementary particles referred to should be detected soon. However, none of this relates to the title of the paper, nor is the claim in any way detailed or justified;
  - ii) Article 46 begins by quoting a standard formula for the action  $S$  of an instanton. The Claimant then reinterprets this in terms of 16 four-dimensional spheres, but there is no logical connection. He then leaps to the dimensions of Lie groups and holography and E-infinity. These statements are all non-sequiters: there is no logical argument presented. Professor Turok described this paper “*as merely a collection of buzzwords.*”
    - iii) *Statements which are meaningless or obscure, even to a reader with expertise in the field*
146. Article 46 is an example. Some of the articles contain a series of randomly connected buzzwords which mean nothing in the context in which they are used. For example: “Heterotic string”; “holography”; “knot theory”; “loop quantum gravity”; “Witten’s 5-brane” and “Fuzzy physics”.
147. Professor Turok gives other examples of statements which are “nonsense” including in Article 11, the final paragraph of which states that the “*maximal expectation number of elementary particles in the standard model is 69 particles*”, a statement that makes no sense. See also what is said about Article 54 at paragraph 143 above.
- iv) *Statements which are simply wrong*
148. See the example given at paragraph 143 above. Article 54 begins with some quotes from a famous physicist, Gerard ‘t Hooft, which the Claimant wrongly interprets: ‘t Hooft was discussing an instanton (an object in the strong theory of interactions) which can host particles, namely quarks. The Claimant then confuses the particles which can reside within the instanton with the instanton itself.

*v) Elementary errors of spelling and grammar*

149. Professor Turok gives many examples which it is not necessary for me to set out. Some may be regarded as trivial, some not. The point however is that cumulatively they reflect on the quality of the papers themselves.

*vi) Lack of any, or any substantial, contribution of new knowledge to the field*

150. Despite the grand claims made (see for example, paragraphs 137 and 141 above) Professor Turok could not find any evidence for them in the papers in which the claims were made: rather the articles tended merely to repeat the same theories including the unexplained “E-infinity theory.”

*vii) and viii) Self-citation and Self-promotion*

151. The 58 articles contain an excessive degree of citation of other articles written by the Claimant, beyond that normally acceptable in a scientific journal in Professor Turok’s opinion. Indeed sometimes whole sections of the articles are devoted only to this. Article 57 is an example. It is very short, and appears to be devoted to advertising the Claimant’s previous works. Further, key assertions are frequently justified only by reference to the Claimant’s own articles: one example is footnote 9 in Article 11: see paragraph 140 above. Professor Turok said if he had been asked to review the articles, he would have insisted the Claimant justified the assertions by self-contained argument or by references to published work by independent authors as is the common and accepted practice amongst those working in the Field, rather than by reference to his own works.

*The Claimant’s response to Professor Turok’s criticisms*

152. As I have already said Dr Marek-Crnjac failed to engage with the criticisms made by Professor Turok: see paragraphs 42 and 43 above. She said that "*Dr. Turok questions the validity and basis of E-infinity theory in many places throughout his report*" which he did not do. As the Defendants submit there is a clear distinction between questioning a theory’s validity, and criticising an author for not setting it out coherently or clearly stating what it is so it can be understood.
153. In the result, Dr Marek-Crnjac simply did not address or cover the specific and central criticisms of the 58 Articles made by Professor Turok at all. Unfortunately, the Claimant showed a similar unwillingness to engage with the substance of the criticisms made by Professor Turok either, including in cross-examination, despite repeated reminders by me that he should do so.
154. The Defendants make a number of powerful points on the Claimant’s approach to Professor Turok’s evidence in my view. First, insofar as he did engage with Professor Turok, for example when he attacked Professor Turok for mistakenly assuming that in the Claimant’s papers, the “E” in E-infinity stands for “exceptional” (as it does in the case E<sub>6</sub>, E<sub>7</sub> and E<sub>8</sub> of the so-called “Exceptional Lie groups”) he simply proved Professor Turok’s point: “E-infinity” is nowhere defined in the Claimant’s papers, but the term appears frequently in association with E<sub>6</sub>, E<sub>7</sub> and E<sub>8</sub> and the absence of any proper definition of terms, the reader is left to draw the inference from the context.



155. Second, instead of confronting Professor Turok as to the quality of the papers, as Mr Caldecott submits the Claimant adopted a number of other stratagems, none of which were persuasive. The Claimant criticised Professor Turok's report for failing to address the correctness of his papers and/or suggested that insofar as it did so, it addressed matters which were not justiciable. These criticisms were misplaced. As I have said, this aspect of the defence of justification properly focuses on quality in the manner explained, an issue which is amenable to judicial assessment with the assistance of expert evidence.
156. The Claimant also attacked Professor Turok's qualifications as an expert. In my view Professor Turok is obviously qualified to give expert evidence in this case and the evidence he gave was within the area of his expertise. As he explained, his work in cosmology does not place him in a different area of expertise: it is work which requires knowledge of unified field theories and particle physics, the areas addressed in the Claimant's papers.
157. The Claimant also made *ad hominem* attacks of an unpleasant nature on Professor Turok not only during cross-examination, but before the trial in correspondence, and by emailing Professor Turok directly at an address he does not publicise. Curiously for example, shortly before the trial, and 3 days after a letter was sent to the Claimant by the Defendants' solicitors asking him not to persist in his attempts to pressurise Professor Turok into withdrawing his report, the Claimant emailed Professor Turok directly at the Perimeter Institute asking that he be accepted there as a Visiting Scholar and Researcher (an email which Professor Turok forwarded to the Defendants' lawyers). The following day the Claimant then emailed the Defendants' solicitors purporting to comply with their request and stating (amongst other things): "*It is my sincere conviction that this report [by Professor Turok] could not have been written by a scientist of the calibre of Prof. Turok. In fact it could not have been written except by an undergraduate malicious student slashing at an enemy...*".
158. The Claimant then complained to the Board of Directors of the Perimeter Institute about what he described as Professor Turok's "*highly irregular and flagrant breach of fairness*" in forwarding his email to the Defendants' solicitors, conduct which he claimed was "*intended to interfere*" with this litigation. Not surprisingly Professor Turok regarded these various communications as harassment.
159. Other criticisms of Professor Turok did not materially advance the Claimant's case either. The Claimant focused for example on Professor Turok's criticism of his use of the word 'Planckton' in the context of Professor Turok's suggestion that some of the words used in the articles were not real words. He produced a print-out dated 13 September 2011 from Google Scholar which showed the word being used in brief extracts from various academic articles which were ranked. Professor Turok explained, as he had in responses to written questions from the Claimant before trial, that by a real word, he meant a word which would be normally recognisable by a practising theoretical physicist or at least which had a scientific definition which was easily accessible neither of which could be said of the word Planckton. Either way, in the context of this aspect of the case, in my view this point was not of significance, let alone of central significance. The Claimant's criticisms were otherwise irrelevant, or of a peripheral or marginal nature.

160. In the event in my view the Claimant provided no answer to the Defendant's case on quality or to the stark conclusion reached by Professor Turok that "*the [58] papers do not fulfil the most basic requirements of any paper deemed to be publishable in the Field.*"

*Lucas-Box (c): Whilst CSF was under the Claimant's editorial control his articles had been subject to (at best) very poor peer review before publication in CSF.*

*Peer review*

161. Peer review is the process adopted by all reputable scientific journals which publish research articles in order to ensure that the articles are of sufficient academic quality and make a sufficient advance on the existing scientific literature to merit publication.

162. The process is, unquestionably, of fundamental importance to the scientific community (and to the wider public generally) in assessing the plausibility of particular research claims. It is described in the Elsevier Guidelines as "*an essential component of formal scholarly communication, and lies at the heart of the scientific method.*"

163. I have already set out at paragraphs 71 and 72 above, the particular safeguards Professor Keating said are necessary to ensure proper peer review of an editor's papers.

164. It is also important to reiterate that as both Professor Keating and Professor Turok said, there were no features of CSF which would have justified a different approach. On the contrary, peer review in the field in which the Claimant writes is of critical importance for the reasons given by Professor Turok, which were these.

165. He said the Field has been one of the most successful in science, having Newton, Maxwell and Einstein amongst its founders. It has been remarkably successful, having created the standard model of particle physics which explains a vast range of natural and experimental phenomena with extraordinary precision up to a certain range of energy. It underlies innumerable technologies – from mechanical engineering to radio communication and GPS. In the twentieth century one of its main objects has been the attempt to discover the building blocks of matter and the forces through which they interact.

166. By its nature the Field is highly specialised and technical, typically requiring many years of study to master; it also has one of the strongest traditions of logical and mathematical rigour, and respect for objective experimental tests in science. Yet it is also a speculative field, which seeks to discover the next major unification or breakthrough in man's fundamental understanding of the universe.

167. Because it is of widespread popular interest, and it is also a purely intellectual field, requiring no laboratories or equipment, fundamental theoretical physics naturally attracts attention from a very wide range of people wishing to contribute, even though they may not have the expertise to do so. It is therefore crucial that arguments which go beyond what has been tested experimentally are justified with a high degree of logical and mathematical rigour, and that wild and unsubstantiated speculations are resisted or at least, clearly labelled as such.

168. Peer review is therefore of critical importance to the maintenance of high standards and the health and reputation of the Field. In other words, the risk of uninformative publication by inexpert amateurs is high. Yet the Field will only advance if the strictest standards of mathematics and logic are applied.

169. In his evidence-in-chief Professor Turok explained the matter in this way in answer to a question from Mr Caldecott:

“Q. Do you take the view that peer review remains important wherever you are operating in this broad field that we are describing?”

A. I would put it far stronger than that. Peer review is essentially what separates theoretical physics from chaos. The point is we are working on speculative theories where we are going well beyond the range of experiment. The best guide we have is mathematics and logic and rigour. Unless one meets those standards, like I say, the very high standards established by Maxwell, Einstein, Stephen Hawking and others, the whole subject would just amount to idle speculation. So mathematical precision, rigour, clarity is the foundation of the field. The best way of ensuring that the field lives up to the highest standards in that respect is peer review because you need somebody independent to scrutinise your work and spot flaws you may not have noticed.

A famous example was Andrew Wiles. This is in mathematics, but he announced that he had proven Fermat's last theorem. Then his colleagues analysed the proof and found a flaw... it was not intentional but when the flaw was recognised it then took him a couple of years to find it and luckily for him he was able to rectify it. So this peer review process is extremely important for catching errors of logical thinking or mathematical argument.”

170. As I have already said, it is the Claimant’s case and has been from the outset, that all papers submitted to CSF, including his, have been peer reviewed. As P. Cooper, quoted in the Article said on his behalf: “*Our papers are reviewed in the normal way expected from a scientific international journal published by a reputable international publisher.*”

171. He has however raised questions about the value of peer review in his pleadings and evidence, to the effect that his work was of such a level and so highly specialised, there are few who could properly be regarded as his peers for the purposes of review. To similar effect were the views of Professor Ord which I have already mentioned at paragraph 113 above, who said that “*the role and efficacy of peer review is much less clear with really new ideas because for these, a true peer group does not exist... [the Claimant] has very few peers simply because very few people can approach the breadth of his knowledge or his ability to synthesize disparate approaches.*”

172. Does the narrowness of the field or the eminence of an author provide valid reasons for not engaging with the peer review process? Professor Keating said all the people he knew who he considered eminent actually embraced peer review. He said he would be deeply concerned if an author published a large number of papers in the journals he edited that could only be understood and appreciated by so small a group as that identified by the Claimant. He would also be concerned that papers alluding to some of the most fundamental and important problems in theoretical physics could not be understood by people he considered to be world-leaders in that subject. He said he could not judge whether or not the group of people who on the Claimant's case had reviewed his papers (Professor He, Professor Iovane, Professor Ord, Dr Marek-Crnjac and Shakry Nada) were sufficiently expert to assess the technical merits of those papers; but he did not believe they would be widely viewed as world-leaders in theoretical physics by the majority of theoretical physicists. Professor Turok said the same. He did not know these individuals and he was unaware of their expertise; but he said none were well-known authorities in fundamental theoretical physics.
173. In the event however, the Claimant's case on this issue must be judged according to the position he has adopted in this litigation. In his letter of claim he said: "*My articles ...were always subject to an appropriate level of peer review, which means that at least one, or sometimes two or more referees were asked to review the paper*". In his pleaded case he says that "*all papers submitted for publication in CSF have always been refereed (i.e., peer-reviewed)*" and "*So far as the Claimant's own articles in CSF are concerned... every one of those was referred to and reviewed by one or more of his peers in the field before publication.*"
174. There were three main strands to the Defendants' case that contrary to the Claimant's claims his articles were not subject to any or any proper peer review. First, an inferential case based on the quality of the Claimant's papers; second the implausible absence of documentation supporting the various accounts about this issue given by the Claimant and his witnesses; and third, an assessment of the Claimant's own case on peer review, taking it at its face value.

*Lack of quality in the context of peer review*

175. As set out above, Professor Turok assessed the quality of the papers. In his judgment, the quality of these articles was poor, and none would have been accepted for publication in any of the premier journals which have used as comparators in this case or in any journal operating a rigorous and impartial refereeing system.
176. His conclusion was that "*any referee within the Field, of normal competence, would most likely have rejected these articles for publication*". He was surprised by the number of mistakes the articles contained which should have been identified and corrected before publication, as well as by the enormous and unsubstantiated claims made in the 58 articles which should have been questioned (and in his view would have been questioned) had any proper peer review process been in place.
177. He gave as examples, some matters already mentioned on the issue of quality. For example, from paper 11:

"Q. Just looking at the last two sentences of the conclusion, you will see [it says]: "Employing the same counting procedure

and noting that on this basis 60 elementary particles have been experimentally observed one must be inclined to think that another 9 particles are still missing"?

A. Right.

Q. First, have you any comment to make about that sentence?

A. Yes, it is very hard to interpret. It depends on how you count the number of particles, but I think the 60 elementary particles is not consistent with the counting I would do, which would be 120. But then the statement that another nine particles are missing, there is no discussion of what they are or what their properties would be, so it is very very hard to make sense of this statement.

Q. Then the last sentence: "It is very likely that at least 5 of these particles will be detected experimentally in the not very distant future"?

A. Any referee would have said how? What properties? What kind of experiments? You will notice that reference 9 is to his own paper, which I have looked at and, as far as I can see, it gives no characterisation of the expected properties of the particles at all."

178. To take another striking example, any referee worth his salt would have spotted that the abstract in paper 7 bore little if any relationship to the body of the paper itself.
179. The short point is a proper peer review process would have "picked-up" the defects in quality Professor Turok identified and Claimant's papers would not then have been recommended for publication, let alone published in their current form.

*The implausible absence of documentation*

180. The starting point is that the Claimant has failed to provide any documentary evidence whatever that his papers were the subject of peer review even though some of his witnesses claim to have participated in the process. Documentary evidence would ordinarily be the first 'port of call' for proof on such a topic, and, such evidence, if it ever existed, should have emerged through the disclosure process. As it is, various explanations given for the total absence of evidence falling into this category are implausible in my view.
181. In this context, I should mention the position of Ms Boehm. The Claimant edited CSF from what was for material purposes his home in Cobham, Surrey. This was the address given for correspondence in CSF itself and the Claimant also stayed there during the course of the trial. It was also where most of the administrative matters relating to CSF were dealt with, albeit matters also appear to have been dealt with on a relatively informal basis from countries where the Claimant happened to be at the time. According to Ms Boehm's witness statement she assisted in the administration of CSF. She said she had worked full time for the Claimant for 14 years; and then in a

part-time capacity for 6 years; and she also played an important part in organising the peer review of articles sent for inclusion in CSF and in the selection of reviewers for the Claimant's own articles.

182. In her witness statement she said that it had always been the policy of CSF for the Claimant's papers, as well as those of other authors to be sent for refereeing to people "*who have knowledge and understanding of the subject...Therefore it follows that [the Claimant's] papers were reviewed by various people who are using his new theory, for instance Prof. Ji-Huan, Prof. Gerardo Iovane, Prof. Garnet Ord, Prof, Leila Marek-Crnjac and Prof. S Nada. Apart from that, Prof. El Naschie himself had lengthy discussions on the telephone and in writing with Prof. Martienssen, Prof. T. N. Palmer and Prof. Greiner and numerous others concerning any forthcoming paper prior to publication. It has never been the consistent policy of the Journal to keep reviews or the papers once a paper has been published and I have not made an exception for the work of [the Claimant] ...It has always been done that way simply to keep the files down due to lack of space, particularly because [the Claimant] does not use email and the Journal was only run that way recently and reluctantly. We have dealt with an enormous amount of papers and therefore referee reports over the years and it simply becomes impossible to find anything so we always deleted anything once it was complete and published, particularly because the offices of [the Claimant] were in the U.S.A., England, Germany, Switzerland, Egypt and Saudi Arabia, all places where he worked when I was employed by him.*"
183. If true her evidence was strongly supportive of the Claimant's case on peer review (as well as on the issue false names which I deal with at paragraphs 286 to 317 below). Before the trial took place, the Claimant asserted unequivocally, that barring unforeseen and exceptional circumstances, Ms Boehm, who lived in Germany, would be attending ("*Anke Boehm will be at the trial and I personally guarantee that with the exception of a force majeure she will be God willing at the trial*"). Ms Boehm herself supported the Claimant very vigorously throughout, including corresponding on his behalf with the Editor-in-Chief of *Nature* and with his solicitors but from afar. She followed the course of the trial from Germany, reading the transcripts, and sent correspondence to the court about her views on various matters.
184. In the event, she did not come, at least not during the trial itself. Her stated reason for what Mr Caldecott describes as her *volte face* is that she did not wish to be cross-examined by the Defendants having read the transcripts and because she felt at a disadvantage because proceedings were in English – even though it is apparent from her correspondence that her English is good. None of these matters in the circumstances seemed to me to provide a reasonable excuse for her non attendance.
185. Further, as I have already mentioned, I gave a direction at the close of the evidence that no further evidence would be received. After I had done so, the Claimant sent documents to the Defendants and to the court, apparently indicating that Ms Boehm had come to England with various documents for the purposes of the case. This behaviour confirmed rather than contradicted my view that Ms Boehm's willingness to assist did not extend to allowing her evidence to be tested on oath. It was relevant to the view I took of the weight to be attached to her evidence, and its lack of credibility in certain important respects, including on the issue of peer review.

186. In order to understand how it came about that there were no documents to disclose, particularly in the absence of Ms Boehm, the Defendants undertook a careful analysis of the evidence on this issue bearing in mind this litigation was started very shortly after the publication of the words complained of in *Nature* and was proximate in time to the publication of the Claimant's 58 articles in 2008.
187. A summary of that evidence was provided by Mr Caldecott in closing as follows:
- i) There were no internal documents from CSF setting out the policy and procedures for arranging the review of a paper by the Editor in Chief (or anyone else);
  - ii) There were no disclosed records of which papers by the Claimant went to which reviewer;
  - iii) There were no referee reports of the Claimant's papers, or correspondence between CSF and reviewers about the review of his papers. In her second witness statement, Ms Boehm claimed there was a policy of "deleting" reviews once a paper was published (see paragraph 182 above, and the Claimant's pleaded case was to similar effect). Though it is not clear from the context whether Ms Boehm was talking about deletion of electronic files or disposal of hard copy documents, or both, her claim was contradicted by the fact that some referee reports on other authors' papers had survived;
  - iv) A number of individuals named as reviewers of the Claimant's submissions to CSF provided witness statements for him (Professor He, Professor Iovane, Professor Ord, Dr Marek-Crnjac and Shokry Nada). It might be thought they would co-operate with the Claimant and provide him with their own copies of reports, if they had retained them. But none were provided. Where documents have been "mentioned" in witness statements, the Defendants requested them under CPR 31.14. The request yielded no documents to evidence review of the Claimant's papers. One of the witnesses, Shokry Nada, said he has not retained copies either;
  - v) The Claimant refused to identify which reviewers reviewed which of his 2008 papers, even though he knew (from Ms Boehm's witness statement) who they were likely to be. His original objection was that to make these inquiries would violate the confidentiality of the review process, but Eady J considered this argument, rejected it and ordered that the Claimant should provide a list;
  - vi) The Claimant did not provide any disclosure of electronic documents or emails evidencing peer review of his own papers submitted to CSF. This in spite of the fact that email was used for corresponding with reviewers (at least as one of several methods) as long ago as 2001. This is demonstrated by a letter from Mrs Thorsen-El Naschie dated 3<sup>rd</sup> August 2001. The recipient was a Mr J. Giles of *Nature*. In it, Mrs Thorsen-El Naschie described the refereeing process she said was undertaken at CSF, and said this: "*Due to the large number of papers handled and in order to expedite publication, refereeing is frequently done by fax or email...*";

- vii) As to the specific email addresses in question:
- a) [chaossf@aol.com](mailto:chaossf@aol.com) appears to have been the principal address used for the administration of CSF since mid-2007. Mrs Thorsen-El Naschie claimed, in February 2010, that 13,000 emails had disappeared from the outbox but asserted that there were at that time “over 15,000” emails in the inbox. No emails sent to this address relating to peer-review of the Claimant’s papers have ever been disclosed. Mrs Thorsen-El Naschie accepted in cross-examination that the inbox had not been searched for the purposes of this action;
  - b) [A.boehm1@t-online.de](mailto:A.boehm1@t-online.de) is an address associated with Ms Boehm. If it is correct that she handled the peer review of the Claimant’s papers, then one would expect to see emails between herself and reviewers evidencing that process. The Defendants asked the Claimant to search this email account in a letter sent in advance of standard disclosure. Whether or not emails to/from this address are, strictly speaking, within the Claimant’s “control” for disclosure purposes, the Claimant could reasonably be expected to have asked Ms Boehm for them: she has assisted him in this litigation by providing 4 witness statements and conducting some correspondence on his behalf. No relevant documents have been provided. The Claimant claimed under cross-examination that Ms Boehm’s computer has been the target of a “cyberous attack”. This was not a claim which she herself made until her 3<sup>rd</sup> witness statement dated 23 November 2011;
  - c) [Mheddini@yahoo.com](mailto:Mheddini@yahoo.com) appears to be the email address of Mervat Hamid, a friend of the Claimant, who sometimes typed his papers and claims to have sent them to referees, during the period he was in Cairo or Alexandria. The Claimant’s own case is that he was predominantly in those locations in 2006-2008;
  - d) In her witness statement Ms Hamid said this: “I did not keep a record of the names of referees I sent his work to because once his papers got accepted I immediately deleted the computer files that contained their details and I stress here that this procedure took place for every paper I typed for him. [The Claimant] always stressed that I do so without fail”. In advance of standard disclosure, the Defendants asked the Claimant to search this email account. No relevant documents were ever provided. In cross-examination, the Claimant denied having asked Ms Hamid to delete the computer files. Instead, he claimed that Ms Hamid’s computer has suffered a cyber attack as well, something she herself made no mention of in her Witness Statement;
  - e) [LTho410189@aol.com](mailto:LTho410189@aol.com) is another email address registered to Mrs Thorsen-El Naschie which appears to have been used for CSF business prior to the change to [chaossf@aol.com](mailto:chaossf@aol.com) in mid 2007 and sporadically thereafter. Again the Claimant was asked to search it; again there was no relevant disclosure.



188. It can be seen from this analysis that a variety of reasons have been advanced for the absence of some of the documents, including three separate cyber attacks, one of which was not apparently noticed by the person whose account was attacked. But otherwise, there are no documents and no explanation is offered for their absence. In my view even if were true that Ms Boehm had not kept any hard copies for because of a lack of space, or there were three separate cyber attacks, this does not explain the total absence of documents, including from those who were said to have reviewed the Claimant's papers, and who would have received relevant emails which could then have been disclosed, or from Mrs Thorsen-El Naschie's inbox.
189. As Mr Caldecott also pointed out, the Claimant's refusal to provide information and documents in these proceedings reflected his earlier refusal to sign up to the Elsevier ESS<sup>12</sup> which would have promoted transparency of the process and kept a record of the reviewers of his papers, but without impinging on the choice of reviewer or the editorial decision whether to publish a paper.
190. Professor Keating could think of no good reason why an editor would refuse to adopt an ESS system. The dearth of documentary evidence, together with the Claimant's refusal to provide relevant information (including in the face of a court order that he do so) supports the inference that either there are no documents because there was no peer-review of his papers; or such documents that do exist reveal the peer review process to be so flawed that the Claimant has decided not to obtain or disclose them.

*An assessment of the Claimant's own case on peer review, taking it at its face value*

191. Even if the Claimant's case on what happened at CSF is taken at face value, it is apparent as Professor Keating concluded that nothing which could be described as appropriately rigorous or ethical peer review of his papers took place.
192. Thus, no independent members of the Editorial Board were appointed to oversee the process or to take the final decision whether or not to publish the manuscripts submitted by the Claimant. Instead, on the Claimant's case the review of his papers was administered by Ms Boehm or possibly, when he was in Egypt, by Mervat Hamid. He said that he always gave his papers to Ms Boehm to send for refereeing, and he did not check to whom she sent them. However, Ms Boehm and Ms Hamid were not members of the Editorial Board and neither was suitably qualified to identify appropriate referees. Ms Boehm has no scientific qualifications. She is said to have known simply from "experience" which referees to approach. Ms Hamid is or was a professor of English Literature.
193. During the course of his cross-examination the Claimant said he could not remember whether Ms Boehm consulted with him about who should review his papers or not. It would obviously have been highly irregular if she had done so. The position with regard to record keeping was also highly irregular: these ought to have been kept rather than actively destroyed, as, according to the Claimant's case, they were.
194. In the context of the applicable norms, special mention should be made about the position of Dr Marek-Crnjac. I have already set out my concerns about her independence and objectivity when dealing with her expert evidence. The same

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<sup>12</sup> See paragraphs 225 and 226 below.

concerns arise in relation to her role as it is said to be, in peer reviewing the Claimant's papers, bearing in mind that referees should be able to give an independent, unbiased assessment; they should not be collaborators or close colleagues of the person whose papers they are reviewing and that it is important to vary the choice of referees to avoid the problem of small cliques to which Professor Keating referred.

195. According to Dr Marek-Crnjac's evidence, she reviewed all of the Claimant's papers published in CSF in the last 3 years of his editorship. It follows from what is said in the Claimant's pleaded case and the Letter of Claim that, on occasions, she will have been the only reviewer of his papers, even though 2-3 is the recommended number. Professor Keating said it was "*manifestly irregular that one reviewer should have been used for all the Claimant's (many) papers over at least a three year period*" because of the obvious risk of systemic bias and because it offended against the principle that reviewers should be varied, to avoid the formation of cliques.
196. There were other matters of concern. First, Dr Marek-Crnjac's apparently uncritical admiration of the Claimant. Second, their closeness in this respect: 13 of the Claimant's 58 papers published in CSF in 2008 contained in total 15 citations of Dr Marek-Crnjac's papers (8 of them altogether, also all published in CSF, 2002-2008, with one "in press"). Dr Marek-Crnjac was the second most prolific publisher in CSF in 2008, with 9 papers appearing. Third, it is not clear whether Dr Marek-Crnjac was qualified to review the Claimant's work, certainly, given the Claimant's opinion that there were very few people who could match him in his knowledge of mathematics.
197. Although Dr Marek-Crnjac was the most egregious example as Mr Caldecott described it, of a failure to ensure proper peer review of the Claimant's papers, there were similar difficulties with regard to the rest of the small group identified by Ms Boehm as likely to have reviewed the Claimant's papers (Professors He, Iovane, Ord and Shokry Nada). In short, they all identified themselves as close friends, corroborators and admirers of the Claimant, and none had the requisite independence and objectivity required. Professor Keating described them as "*uncritically sympathetic*" to the Claimant. Professor He for example, as I have already said when considering his role as an expert, placed the Claimant with Einstein and Newton as "*among the best in the history of physics*" a matter referred to in the Article itself. In Professor Keating's view this placed Professor He "*in a very small subset of the researchers in the field of mathematical/ theoretical physics*".
198. I have no doubt that the Claimant engaged in informal discussions with colleagues about his papers. I do not accept however that these formed any part of a formal peer review process as the Claimant endeavoured to suggest in cross-examination. In essence he appeared to be saying that Ms Boehm would make notes when reviewers had criticisms of a paper, which she would then pass on to the Claimant. By a process of guesswork, he would then work out who the reviewers were and then have an informal discussion with them about their criticisms. No documents have been disclosed of this purported process which is neither plausible in my view, nor in accordance with the appropriate procedures identified by Professor Keating.
199. It does not accord either with the process described in evidence by two of the Claimant's witnesses, Professor Roessler, and Professor Ord. Professor Roessler accepted in cross-examination that he did not peer review any of the Claimant's

papers in the formal sense of producing a detailed report with specific criticisms. He said a document produced by the Claimant (upon which there was a note, not in his hand which said "*In response to a request for a referee report: note answering direct to Mohammed*") was the product of open discussion with the Claimant. Professor Ord also said that he had long discussions with the Claimant about his papers. Significantly however Professor Ord said that he did not engage in any formal anonymous peer review of the Claimant's papers. This was contrary to the Claimant's pleaded case, and the evidence of Ms Boehm, who, as already indicated, named him as a confidential peer reviewer.

200. As the Defendants submit, there is nothing wrong with pre-publication discussions among scientific colleagues, but they are no substitute for proper peer review in the sense described by Professor Keating. The Claimant ultimately accepted the distinction between the two, and said that his papers were the subject both of informal, open discussion and formal, confidential and independent peer review in the true sense. But as it is, I am satisfied that his papers were not the subject of any or any proper peer review at all.

*Evidence of what happened to other authors who submitted papers to CSF for publication*

201. The simple and additional point here is that if the procedures in relation to other authors were defective, it increases the likelihood that the Claimant's own papers were not properly reviewed. It would not have been proportionate to examine this issue in depth, and the Defendants did not endeavour to do so. In the event, as I have said I am satisfied that the Claimant's papers were not the subject of any or any proper peer review without considering this additional evidence. I should however mention the three examples which the Defendants raised because it seems to me they give a pertinent insight into the review procedures within CSF such as they were, and they tell a cautionary tale of the dangers of dubious practice in the important area.
202. The first example concerns a paper by Dr Germano D'Abramo, a researcher at the Istituto di Astrofisica Spaziale e Fisica Cosmica in Italy. (I should add that the Claimant did not plead to the allegations made about this in defence, nor was it dealt with by him in any of his evidence). Dr D'Abramo submitted a paper to CSF in 2007 entitled "On the Church-Turing Thesis" (the "CTT Paper"). It was accepted for publication on 21 August 2007 by an email signed "C. Cole – Assistant CS&F" (as is now conceded this was an invented name, which according to Ms Boehm was used by her). Dr D'Abramo discovered shortly afterwards that his paper contained a fatal flaw, "*a serious error*" in his calculations which "*utterly invalidated the result*". Dr D'Abramo notified CSF accordingly, and said his paper would have to be withdrawn. He received a curious response by email from an H. G. Boehm (the name of Ms Boehm's Father) described as the CSF's Managing Editor. It said that withdrawing a paper was a serious matter as the publisher had already expended costs on the paper, and they took a dim view of authors not "proofreading" their papers carefully. For the purposes of this action, Professor Turok read the CTT paper and Dr D'Abramo's witness statement. He confirmed the error was serious, and that it should have been picked up in the review process if the paper had been properly reviewed.
203. The next example concerns a paper submitted by Dr Ben De Lacy Costello, a Senior Research Fellow in the Faculty of Applied Sciences at the University of the West of

England. He submitted a paper to CSF in 2007, the BZ Reaction Paper. He eventually received a review, relayed by C. Cole, which said: *“this is a nice paper and it will eventually be published but we cannot do so without very high quality figures”*. The figures were contained in photographic images to be included in the BZ Reaction Paper. In Dr De Lacy Costello’s view, this response did not accord with the sort of review comments an author might normally expect to receive; and was particularly unhelpful, because it did not explain what the problem with the figures was. His request to CSF for clarification received no response. Eventually Dr De Lacy Costello worked out that as a result of a Microsoft Word incompatibility, some experimental figures in the paper sent to CSF were too small to read. These figures however were the most important aspect of the paper. As Dr De Lacy Costello said, how could a conscientious reviewer review the paper without being able to read the figures, let alone recommend its publication? His conclusion, as is mine, was the paper could not have been subjected to any proper peer review process at all.

204. The third example concerns a paper written by Esposti et al, of the Department of Mathematics of the University of Bologna. Their paper (“Sequence distance via parsing complexity: heartbeat signals”) was accepted by a regional CSF editor in February 2007. In July 2007 the authors were told by C. Cole by email that new referees had looked at it and required, as a condition of publication, additional references to papers published in CSF by Hao Bai Lin and others “on DNA and related subjects”. (*“Publication will be halted until we receive either your revised manuscript electronically to this office – or an official email from you stating that you wish to withdraw from publication”*).
205. The authors then explained in their reply that that their paper did not relate to DNA. Nevertheless they asked to be directed to the papers which the referees apparently had in mind. This was the response from C. Cole. *“Our referees are now on a holiday break. Only one of the Referees mentioned DNA – the others just refereed (sic) to many related works published in CS&F. I am sure you will find something on Elsevier’s site Science Direct. Just do what you can and resubmit.”* Mr Caldecott described what was revealed here, and rightly so in my view, as disgraceful and utterly improper. Having dropped the completely inappropriate requirement for a reference to DNA – any additional references would do, so long as they were to papers published in CSF. The authors then appear to have called CSF’s bluff – adding a single reference to a work by Hao Bai Lin but published in another journal. It seems probable that the paper then only made it into CSF because, fortuitously, the authors sent it direct to Elsevier, because their email sending it to the chaossf address bounced back.

*Lucas-Box (d) CSF’s Impact Factor may have been inflated by an excessive rate of citation of the Claimant’s articles in CSF during his editorship.*

206. The raw data and relevant calculations in relation to these issues were provided by Ms McVeigh who verified the pleaded statistics pleaded and relied on by the Defendant (in particular as to the self-citation figures or their effect on the IF).
207. CSF’s IF for 2007 was 3.025; and its IF for 2008 was 2.980. Professor Keating regarded these figures as *“exceptionally high”* by reference to other journals in the same area.

208. The effect of the Claimant's own Internal Self-References on CSF's IF is noticeable, though not extreme. Professor Keating described the effect "minimal". In 2007 as Ms McVeigh demonstrated, excluding these Self-References would have reduced the IF from 3.025 to 2.981. In 2008 excluding these Self-References would have reduced the IF from 2.980 to 2.909. It is important to note that only a subset of the Claimant's Internal Self-References are taken into account in these calculations because, by definition, the IF is based on references to articles published in the 2 previous years, not in the current year or further back.
209. The figures which really matter for this part of the case however are those for Journal to Editor Self-Citation (that is the citation, by any author writing in CSF, of articles by the Claimant published in CSF). Excluding Journal to Editor Self-Citations reduces CSF's 2007 Impact Factor from 3.025 to 2.793 and CSF's 2008 Impact Factor from 2.980 to 2.800. Professor Keating describes this as a "marked influence."
210. The question then arises whether the citation of the Claimant's papers which has this inflationary effect on the IF is "*excessive citation*". In my view it is for the following reasons.
211. First, the vast majority, as it was described by Professor Turok, of citations within the Claimant's own papers were to papers written by him. Moreover, key assertions by the Claimant were frequently justified only by reference to his own papers rather than by a self-contained argument or by references to peer reviewed work by independent authors as is the common and accepted practice in the Field. In Professor Turok's view the Claimant's papers "advertised" himself to an unusually high extent: indeed sometimes, whole sections of his papers were devoted only to this. The Claimant's papers were self-referring and self-promoting to an extent well beyond that acceptable in a scientific journal. In those circumstances, his self-citation obviously excessive.
212. Second, the quality of the Claimant's papers is also relevant. Professor Turok's evidence was, in effect as Mr Caldecott submitted, that the Claimant's papers were bordering on meaningless. Any citation of papers of such poor quality was excessive, and they should not have been cited by the Claimant or any other author writing in CSF.
213. Third, two charts provided by Ms McVeigh set out in Schedule 2 to this judgment, illustrate two important related facts: (i) that the vast majority of references to the Claimant's papers are from other papers published in CSF, rather than from the wider literature; see Ms McVeigh's Figure 4; and (ii) the strong correlation between the citation of Claimant's papers and his editorship of CSF: see Ms McVeigh's Figure 5. As Professor Turok said there was a remarkably strong correlation between years when the Claimant's papers received a large number of citations, and the years when he was editing CSF (falling for example, from 1325 in 2009, to 26 in the first third of year of 2011). The correlation continues into 2009, because the journal had a significant backlog of papers already accepted by the Claimant which Elsevier agreed to publish as one of the terms of the Claimant's retirement. There are other journals publishing work in the same area as CSF and where one might expect to see citation of the Claimant's work if such citation were academically justified. Though the Claimant referred to some Google Scholar Statistics in his cross-examination of Ms McVeigh and in his closing submissions, which apparently showed 421 citations to date of one his papers, these statistics were not formally in evidence at trial and the

Defendants did not have an opportunity to investigate the source or dates of the citations concerned.

214. The inescapable conclusion therefore is, as the Defendants submit, that the papers published in CSF under the Claimant's editorship discussed and referred to his work to an unjustified extent. On this basis also, citation of the Claimant's work by authors writing in CSF can properly be described as excessive.

*Lucas-Box (e): There were reasonable grounds to suspect that the Claimant's imminent retirement as Editor-in-Chief was connected to these aforesaid faults as Editor-in-Chief. Alternatively, if the Article meant and was understood to mean that the Claimant was dismissed or forced to retire because of his faults as Editor-in-Chief, then it is true in that meaning also.*

215. The evolution of this case is revealing. The Defendants' pleaded case was originally an inferential one. In the absence of disclosure from the Claimant, the Defendants then obtained voluntary disclosure from Elsevier (the Elsevier Documents) containing both Elsevier's correspondence with the Claimant, and its own internal documents from which it was then possible to trace the history of the Claimant's departure directly through contemporaneous accounts.<sup>13</sup> The Defendants then expanded their case accordingly. The Elsevier Documents speak for themselves, though there is also a useful commentary on them from Dr. Charon Duermeijer, and Martin Tanke who were the two people within Elsevier principally dealing with events relating to the Claimant's departure from his position as Editor-in-Chief.
216. Amongst the Elsevier Documents are a letter of termination to the Claimant from Elsevier, and correspondence from which it can be seen that Elsevier terminated the Publishing Agreement, that they did so because they were dissatisfied with the Claimant's editorship of CSF, that they maintained their position despite threats of litigation and protests from the Claimant; and that the Claimant was forced to 'retire' from his position as Editor-in-Chief of CSF.
217. The Elsevier Documents therefore establish not merely reasonable grounds, but the higher meaning complained of by the Claimant.
218. Not only are the essential elements of the Claimant's contrary case untrue, I am satisfied he knew his case to be untrue at the time it was advanced in this litigation (even excluding for this purpose, what came to light from the Elsevier Documents). In this context, it is relevant that the Claimant was self-evidently a party to the material events which were proximate in time to the publication of the Article, and that the Claimant must have had the some of the relevant documents to hand (though in the event he did not disclose any) when his original case was advanced, first in correspondence and then in the Amended Particulars of Claim.
219. The Claimant's pleaded case on the facts (before Elsevier's disclosure) was that he "*eventually ceased editing CSF because over time he found Elsevier's increasingly commercial approach to its publication intolerable*".

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<sup>13</sup> The Claimant complains of redactions made to the Elsevier documents. The redactions were made before the documents were disclosed to the Defendants for the purpose of withholding sensitive commercial information. There were no further redactions by the Defendants.

220. In his Letter of Claim of 12 February 2009, sent by him personally, the Claimant said *“Whilst it is correct to say that I had decided to retire from my position as editor of Chaos, Solutions & Fractals with effect from a date later this year, [i.e. 2009] I had not been forced to do so, either because I misused my position as editor or at all.”*
221. Thus, the essential elements of the Claimant’s case were that it was his decision to retire; that there was no element of coercion; that there was no suggestion that he was at fault; and his reasons for retiring lay in Elsevier’s unacceptable approach to CSF – in other words, he made an honourable and voluntary decision to go.
222. The Claimant was as Mr Caldecott submits clearly extremely annoyed by the release by Elsevier of its documents which contradicted his case (claiming the communications were “privileged”, that he could not comment on the Elsevier Documents without “breach of trust” and that the information within them was “irrelevant”). Though now constrained to admit that Elsevier had written a letter terminating the Publishing Agreement the Claimant nonetheless maintained his denial of the Defendants’ case in the face of its truth on the documents. His positive case remained as the Defendants submit, a gross distortion of the true facts, including for example, his suggestion that he made no concession to Elsevier.
223. The Elsevier Documents show that Elsevier served notice of termination on 13 June 2007 pursuant to clause 3 of the Publishing Agreement, signed in June 1990, which provided for 3 year terms, automatically renewed, terminable by notice 12 months before the expiry of any such 3-year period. The notice was effective as at 30 June 2008.
224. Dr Duermeijer is now the Publishing Director in the Physics Department at Elsevier B.V. having worked as a Publishing Editor in the Physics Department until her promotion to her current role. CSF was one of a portfolio of journals for which she was responsible. She was the Claimant’s primary point of contact at Elsevier.
225. Dr Duermeijer said she found it difficult to work with the Claimant. Part of her job was to implement changes to improve journals published by Elsevier (such as EES), but she found it impossible to implement any changes at CSF as the Claimant did not want to make changes either to the Journal itself or to the way it was run.
226. Elsevier’s desire to introduce EES for example was in line with good industry practice; certainly it was not evidence of an “increasingly commercial approach”. Dr Duermeijer’s proposal to introduce EES was first made to the Claimant on 20 June 2006. If implemented it would have led to transparency and exposed the failings of the peer review system at CSF. I would add that the Claimant’s apparent concern at new technology was no good reason for rejecting it in my view not least because CSF had been using email for some years as can be seen from the letter from Mrs Thorsen-El Naschie to Mr Giles of 3 August 2001 (see paragraph 187 vi) above). That Elsevier continued to want to introduce EES is clear from an email to the Claimant dated 19 May 2008.
227. The termination itself followed a detailed review (the review) dated 18 October 2006 by Dr Duermeijer into CSF. Martin Tanke is the Managing Director of Science & Technology Journal Publishing at Elsevier. The review was sent to Mr Tanke amongst others. It is clear from its content that Dr Duermeijer had misgivings about self-

citation and high acceptance rate at CSF (matters illustrated with supporting analyses and graphs); and that there was intention by Elsevier to terminate the Publishing Agreement at the next contractual opportunity.

228. The review said for example:

“Although the journal has a growing impact factor, we are concerned that this is too dependent upon self-citation...

The journal appears to have a high acceptance rate with many accepted papers coming from China”

229. It said the next opportunity to remove the Claimant from CSF would be on 30 June 2007 (Elsevier had only located the Publishing Agreement with the Claimant in 2005); and that Elsevier would need to establish the position with regard to the handover of work in progress and its ability to instruct the Claimant not to receive any more papers once he had been given notice of the decision not to renew his agreement.

230. Elsevier’s perception, recorded in the review was that the Claimant was high-tempered, emotional, difficult to handle and litigious. The review referred amongst other matters (accurately) to a complaint made to Elsevier by Professor Tim Pedley of the Department of Applied Mathematics and Theoretical Physics (DAMTP) at the University of Cambridge about the Claimant’s habit of using DAMTP’s address as his own in articles he had written in CSF. The review noted that Professor Pedley had made it clear he did not want DAMTP’s address to be associated either with the Claimant or CSF. The report recorded (also accurately) that when Elsevier informed the Claimant of this, he became very upset and implied he would sue DAMTP (these had been matters Dr Duermeijer had dealt with personally: see further, paragraph 262 below).

231. On 4 December 2007 (almost a year before publication of the Article) Elsevier gave the Claimant a clear explanation in writing for their decision to terminate the Publishing Agreement. The letter noted a high rate of Journal Self-Citation (with supporting evidence), a high proportion of articles by the Claimant himself and the fact that the Claimant was the most frequently cited author. It stated that there was “*an urgent need to change the editorial structure and strategy of the journal, which as a minimum would involve a number of receiving editors and a clearly stated peer review policy*”. The letter contemplated permitting the Claimant to take the journal to another publisher if a suitable financial agreement could be reached.

232. The correspondence demonstrates that contrary to his pleaded case, the Claimant was desperate to keep his position as Editor-in-Chief. In his letter to Elsevier dated 23 January 2008 for example, the Claimant said “*provided it does not touch my status as Editor-in-Chief*”. In an email of 29 May 2008 to Mr Tanke the Claimant said “*all I really want is a return to the immaculate relationship which has always prevailed between me and my publisher.*”



233. The Claimant's stance when trying to persuade Elsevier that he should not be "ousted" from CSF" was that Elsevier as "*without a trace of doubt the best journal publisher in the history of the profession*" see his email to Mr Tanke of 21 May 2008. Although the Claimant described this as mere flattery in his evidence, whether the sentiment he expressed was false or not, it is clear that its purpose was to try and persuade Elsevier not to terminate the Publishing Agreement.

234. Following a meeting between Mr Tanke and the Claimant on 5 June 2008, the Claimant said in an email to Mr Tanke the next day:

"Charon had the nerve to cancel my contract as I was an au-pair working for her over the summer holiday. Then she possessed sufficient insensitivity writing to me reminding me that she cancelled my contract...I am now in possession of the full facts behind the conspiracy which has be sewn (sic) against me to deprive me from the fruits of my 17 years work and I am determined that a vicious plan, designed partly to defame me and ruin my reputation will not succeed and will be resisted with all means at my disposal within legality...

I agree with you that a court case will be painful and costly for all concerned. I want an exit and an honorable (sic) one. I am 65 and intended to resign in 3 years anyway...

After working for so long...I should not be kicked out like that, and I will not be, come what may...

I need a minimum of one year grace period for an exit..."

235. There were in fact three references in that email to the Claimant being "*kicked out*" as well as earlier references by the Claimant to him being "*ousted*" from CSF. This was as Mr Caldecott submits the true position - a position which is wholly incompatible with the Claimant's pleaded case as he must have known at the time it was put on the record.

236. The Elsevier Documents show that Elsevier through Mr Tanke agreed a series of short extensions in order to try and agree the terms for handover of the journal with the Claimant, in the face of threats from the Claimant that he would resort to litigation. These threats were never carried out, but they too are wholly inconsistent with the Claimant's case that his retirement was voluntary.

237. Despite a mixture of threats and flattery from the Claimant (often in the same email) and efforts by Mrs Thorsen-El Naschie on the Claimant's behalf to get him reinstated, Elsevier's stance on the termination was resolute: the Claimant had to go. There is no doubt this was not what the Claimant wanted, not least because of his threats to litigate. In October and November 2008 (in letters to Mr Tanke dated 29 October 2008, and the 5 November 2008) the Claimant was still asking for 4 more months in the first instance and then 4 or 6 months "*so that I do not loose (sic) face.*"

238. In the event he did go after Mr Tanke eventually made a final proposal on 14 November 2008 which the Claimant accepted by the Claimant on 18 November 2008.

*Elsevier's internal documents*

239. It is not necessary to make detailed reference to these since the truth of the allegation complained of is evident from the communications between Elsevier and the Claimant. However one early document, an internal Elsevier document dated 26 March 2008, refers to Journal self-citation and self-publication issues and then states "*We are increasingly concerned that lax or inconsistent peer reviewing, plus questionable editorial standards, have severely damaged the reputation of the journal and threaten Elsevier's reputation for upholding scientific standards*".
240. An email dated 27 November 2008 by David Clark, the publishing director of Elsevier, and one of the signatories to the termination letter in June 2007 provides a convenient summary of Elsevier's position at the end:

"...although we received comments on El Naschie, we did not actively solicit feedback or attempt an external review of his science, with opinions from other scientists. Instead we focussed on simple facts: high degrees of self-citation, publishing huge amounts in his own journal and no indication of recent publication elsewhere.

They told us a very clear story which led us to terminate his agreement... On El Naschie's existing papers [i.e. those already accepted for publication in CSF], we cannot prove that they have been through a peer review process. His editorial office, without EES, is a 'black box'..."

241. The contemporaneous documents speak for themselves. They demonstrate beyond argument that the Claimant had no prior intention to retire, that he fought "tooth and nail" as Mr Caldecott described it to remain as Editor-in-Chief of CSF, including threatening to resort to litigation and that he only went because he was forced to do so by Elsevier. He did not jump in other words, he was pushed. They also show that he eventually resorted to arguments about the timing of his departure to save face, but only once it became clear that Elsevier's resolve was unshakeable. Accordingly, his contrary case that he had a longstanding plan to retire, and disagreed with Elsevier only over the timing because leaving in 2008 would give his enemies ammunition is demonstrably untrue.

*Lucas-Box (f): The Claimant was cavalier about his academic and professional affiliations, having falsely claimed to be a distinguished fellow of the Institute of Physics at the Johann Wolfgang Goethe University in Frankfurt and having made other suspect claims to impressive academic affiliations. If, which is denied, the Article meant that the Claimant had claimed affiliations to which he knew he was not entitled, the Defendants will contend that the Article was also true in that meaning.*

*The pleaded false claims*

242. The Defendants' pleaded case relied on 2 groups of misrepresentations. The first appeared on the Claimant's website: [www.el-naschie.net](http://www.el-naschie.net) where it was said that:
- i) *"he is a fellow of the Physics Institute of the Johann Wolfgang Goethe University, Frankfurt"*; and
  - ii) *"He is Honorary Professor in Shanghai's Jiao Tong University"*.
243. The wording concerning Frankfurt was changed on the website in late May or early June 2009 after receipt of the Defendants' substantive letter of response dated 29 May 2009 to the Letter of Claim. According to Ms Boehm, this was done by her.
244. Though the Defendants' description of [www.el-naschie.net](http://www.el-naschie.net) as "the Claimant's website" was not disputed by the Claimant in his pleadings, Ms Boehm's evidence sought to distance the Claimant from it saying that *"it was initially set up by one of Prof. El Naschie's admirers but it was never taken very seriously as Prof. El Naschie does not use the internet and has no interest in publicizing himself in this way."* The Defendants then made a request for further information asking amongst other things, for the name of the person who set up the site and the name(s) of those responsible for maintaining it in 2008-2009. The Claimant never answered those requests, though he was ordered to do so by the court. He said he did not know. He said (as did Mrs Thorsen-El Naschie and Ms Boehm) that he had never involved himself with the administration of CSF, and did not use and did not know how to use a computer.
245. The Claimant continued to distance himself from his website in oral evidence, claiming it was one of some 15 websites set up by students or other third parties claiming to be his but unconnected to him. He denied providing the information for the website and suggested that it had been sourced from other inaccurate statements on the internet.
246. This assertion is not pleaded, but in any event I do not accept it. This was the Claimant's own website containing very detailed information about him and for which he was responsible. That the Claimant cared a great deal about such matters, and in particular his academic status is evident from all the evidence in this case, including his litigious responses on the topic. Further, when the Claimant was questioned by two journalists in November 2008 (QS and Richard Poynder) 2 emails were sent from [chaossf@aol.com](mailto:chaossf@aol.com) on behalf of the Claimant (or his Editorial Board) by C. Cole directing the journalists to "his homepage" at [www.el-naschie.net](http://www.el-naschie.net) as an authoritative source of information about the Claimant.

247. The email for example to Mr Poynder dated 24 November 2008 was sent after Mr Poynder asked to be put in touch with the Claimant and to speak to him. It said:

“Dear Mr Poynder

You can send whatever you want to say to or ask Prof. El Naschie through me and I will attempt to forward it to him. If you need information for whatever reason about Prof. El Naschie his homepage is: <http://www.el-naschie.net/el-naschie-physicist.asp?site=256&lang=>

Regards,

C. Cole”

248. The second group of pleaded misrepresentations were made in two CVs: the “China CV” (dated 2005 or later) and a CV submitted for the 7<sup>th</sup> Annual Conference of the Arab Thought Foundation, apparently prepared for a conference in Cairo in 2008 (“the Conference CV” also called the “FIKR 7 CV”) These misrepresentations concerned Cambridge and Frankfurt.
249. The Claimant accepts that both CVs were produced on his behalf, and sent out to conference secretaries. The China CV for example was sent under by email from Ms Hamid’s email address in response to a request from Professor He made to the Claimant personally.

*Cambridge*

250. *Pleading* The Defendants’ pleaded case is as follows:

“The Claimant falsely claimed in the China CV and the FIKR 7 CV to have been a professor at the Department of Applied Mathematics and Theoretical Physics, Cambridge University (‘DAMTP’). Further, in his papers published in CSF and other journals from 1991 until around July 2001 the Claimant used the words “DAMTP, Cambridge, UK” (or materially similar words) beneath his name, in order falsely to suggest that he held an academic post at, or academic affiliation with, DAMTP. In fact, as the Claimant knows, the Claimant has never been a professor at DAMTP, nor has he held any academic post there or had any academic affiliation with DAMTP, although he had been permitted to use DAMTP’s address for administrative purposes until about late 2000.”

251. The Claimant's Amended Reply (settled by leading and junior Counsel) is as follows:

“5.30 In June 1993, Professor Crighton, the Head of DAMPT [sic] at Cambridge University, certified that the Claimant was a Visiting Scholar in the Department (a status that the Claimant had already held from January 1992 to February 1993). On 10 May 1996, Professor Crighton wrote on the headed paper of the Department a formal notification to the world at large that the Claimant was “with the Department of Applied Mathematics and Theoretical Physics at Cambridge University”. Thereafter, until Professor Crighton's death in 2000, the Claimant maintained a close working relationship with Professor Crighton at the Department.”

5.31 Professor Sir Hermann Bondi was instrumental in introducing the Claimant to the DAMPT [sic]. Professor Bondi became acquainted with the Claimant when the Claimant was studying in Germany in the late 1960s. The two spoke and corresponded regularly on a range of scientific matters, and Professor Bondi subsequently invited the Claimant to Churchill College, Cambridge, on a number of occasions in order to further their scientific discussions. Professor Bondi was also a founding member of the Honorary Editorial Board of CSF and remained on the Board until his death in 2005.

5.32 In light of the foregoing, the attempt made in paragraph 7.20 to cast doubt on the Claimant's academic association with the DAMPT [sic] is unsustainable.”

252. As Mr Caldecott points out, there is nothing in paragraphs 5.30 to 5.32 to dispute (i) that the Claimant claimed to be a Professor in the DAMTP at Cambridge; (ii) that this claim was false; and (iii) that this was known to be false. The only challenge was to cast doubt on the Claimant's “*association*” with DAMTP.
253. The true position in respect of this issue was in my view set out by Professor Pedley in evidence. Professor Pedley is now an Emeritus Professor at the University of Cambridge, and he has had a very long association with DAMTP. He gave evidence orally, but the Claimant did not attend court to cross-examine him. Professor Pedley was a research student from 1963 to 1966, and then a member of the DAMTP Faculty from 1973 to 1989. In 1996, he returned to DAMTP as the G.I. Taylor Professor of Fluid Mechanics and he has worked there ever since.
254. He explained there were a number of different positions within DAMTP, ranging from formal paid positions, to more informal associations. Formal positions, which are full-time and salaried available within DAMTP in descending order of seniority are Professor; Reader, Senior Lecturer, University Lecturer, Assistant Director of Research, Temporary Lecturer, Post-doctoral research fellowships. As for informal

positions, fairly typical in science, and not exclusive to DAMTP, sometimes academics might visit the department by agreement with the Head of DAMTP. They are known informally as “Senior Visitors” or “Visiting Scholars”. They are not formal appointments, but informal associations which can last up to a year, but may be for a few weeks or months. Visiting Scholars are usually given desks and access to libraries and computer systems, and pay a “bench fee”, to cover their overheads, which is discretionary and may be waived. There are no fixed rules but generally, while a Visiting Scholar is physically in the Department they may use its address. They would generally not be allowed to do so on any journal they edited. They would usually have a permanent address elsewhere it would be more appropriate to use.

255. Professor Pedley said the Claimant had never held any formal position or appointment at DAMTP, or within any other department at Cambridge. His only connection with it was as a Visiting Scholar, from about 1991/2 – an association which may have continued to about 2000.
256. For the purposes of this action, Professor Pedley reviewed various documents from which it is possible to reconstruct the events while his predecessor, Professor Crighton (who died in April 2000) was head of DAMTP. He said as early as mid-1992, there was an issue regarding the Claimant’s use of the DAMTP address in CSF, in particular for falsely claiming to be a member of the department in his letter-head. This resulted in a strong, albeit polite rebuke to the Claimant from Professor Crighton in a letter dated 11 January 1993, in which the Claimant was invited not to continue to use DAMTP as his magazine address. What Professor Crighton said was this:

“...my colleagues were put out, and some rather more than put out, by the use of our name on your letterhead. They feel, with considerable justice, that our name is really all we have [...] Second, it is undoubtedly best to have the name on your journal identical with that where most of the business will be carried out, and you will see that we still have to send on one or two things a week from here because of the use of the DAMTP address.”

257. The false claim to which Professor Creighton referred appeared on the Claimant’s letterhead under the heading “Chaos, Solitons and Fractals”:

“Executive Editor

Prof. M. S. El Naschie

University of Cambridge

Dept. of Applied Mathematics and Theoretical Physics

Silver Street

Cambridge CB3 9EW

England, U.K.”

258. It seems the Claimant then changed his letter head, so the Cambridge address no longer appeared on it. Nevertheless, the incident put the Claimant on the clearest notice that he should not, and should take care not to suggest he was a member of DAMTP.
259. The Claimant continued to be a Visiting Scholar on a “rolling basis”. He attaches considerable significance to a letter written in 1996 by Professor Crighton, addressed “*To whom it may concern*” which confirmed the Claimant is “*with*” DAMTP (in his oral evidence the Claimant said the letter may have been requested by him in connection with a visa application). In Professor Pedley’s view the wording of the letter was vague and open to misinterpretation. He said however, whatever the content of the letter, the Claimant was not “*with*” DAMTP in any meaningful sense of the word. I agree. This letter is not evidence that the Claimant was “*with*” DAMTP in any sense apart from being a Visiting Scholar, the only position claimed for the Claimant in the Amended Reply.
260. Whatever significance the Claimant has endeavoured to attach to this letter, including in this litigation, it is obvious in my view that he only ever had limited visiting rights – including as Professor Pedley said in evidence, the ability to use the department’s library facilities. The letter represented no change in the Claimant’s status, despite his attempts to pass himself off as having academic affiliations with DAMTP or to suggest that he was in fact *with* the department in the sense of having an academic post there.
261. In the circumstances it is not surprising that the Claimant’s continued misuse of DAMTP’s name was a matter of concern to those genuinely working “*with*” and within DAMTP. At about the time that Professor Pedley became the Head of DAMTP at least 5 of his colleagues (mainly in theoretical physics section) complained to him that the Claimant had been wrongly claiming he was affiliated to DAMTP and was using its name in CSF. They felt that the use of DAMTP’s name and address on the journal suggested a degree of connection between the Claimant and DAMTP which did not, in fact, exist. This was of particular concern because they felt many of the papers published in CSF in areas they knew about, especially String Theory, were very poor scientific contributions, and had not been critically refereed by experts in the field; and that the association with DAMTP would damage DAMTP’s world-leading reputation (Professor Pedley referred to the fact that Professor Stephen Hawking is amongst DAMTP’s staff, to illustrate DAMTP’s stature in this respect).
262. Professor Pedley therefore took action to stop the Claimant’s misuse of DAMTP’s name. He wrote to the Claimant on the 9 April 2001 telling him that DAMTP did not wish to have the department’s name associated with his journal or his web pages any more. He wrote in similar terms, as I have already said to Elsevier, CSF’s publishers.
263. The tone of Claimant’s response and that of Mrs Thorsen-El Naschie on his behalf was correctly characterised by Mr Caldecott as “*extreme*” claiming for example that DAMTP’s stance was part of an “*intrigue*”. The Claimant also said that he should retain the address for the rest of the year, that there was a binding legal agreement, and, in an echo of other litigation threats made by him, that legal action would follow against Cambridge. Professor Pedley obviously took these threats well in his stride. His reply was courteous but firm: he said provided the Claimant stopped using DAMTP’s name he considered the matter closed.

264. The issue of the Claimant and his alleged affiliation with DAMTP however resurrected itself from time to time. Professor Pedley continued to receive inquiries about the Claimant's connection to DAMTP. His response to one such inquiry (an email in 2005 from someone claiming to be an Egyptian journalist) came into the Claimant's hands for reasons which are not clear. This resulted in a further complaint from the Claimant saying he "*was a member in Cambridge*".
265. Whatever he said however, the simple position on the facts was that from November 1991 when the Claimant was invited to and filled in the relevant visiting scholar form until his status as a Visiting Scholar was terminated on 9 April 2001 by Professor Pedley, this, and this alone was the level of his connection with DAMTP. If the Claimant had wished to be accurate about his connection with DAMTP, he could simply have described himself as a Visiting Scholar there.
266. Instead, despite the warning from Professor Creighton and the later intervention from Professor Pedley misleading claims continued to be made. Thus:
- i) The Claimant continued in his published papers to suggest he had an academic post at DAMTP and/or was employed by the University. He did the same at conferences. In 1998 at an international conference organised by the International Group for Chaos Studies at the Ben-Gurion University in Israel, he was on the International Programme Committee, listed as "*M. S. El Naschie, University of Cambridge, U.K*) and 2001 where the American University of Cairo Physics Department held a talk by the Claimant listing him as "*Affiliated with Cambridge University, U.K.*" (a claim made after the determination of his Visiting status in April 2001 as well as the warning in 1993);
  - ii) In about 1996 the Claimant appears to have suggested to the King Abdulaziz City for Science and Technology (KACST), the Saudi Arabian national science agency, that he was a Professor in DAMTP. A "To whom it may concern" certificate, from the President of KACST said "*This is to certify that Prof. M.S. EL NASCHIE who is now a professor in The Department of Applied Mathematics & Theoretical Physics in Cambridge is also a principal advisor for Science & Technology in King Abdulaziz City for Science and Technology*";
  - iii) In the China CV which was being used in 2006 and the Conference CV being used in 2008 (many years after he had told by Professor Pedley in April 2001 that his limited status as a Visiting Scholar had been determined) the Claimant was claiming to be a *Professor* in the DAMTP from 1991 to 2002. It may not be without significance, that unlike the website, these CVs were not generally accessible, and were used abroad;
  - iv) Thus in the China CV under the heading "*Academic Progress*", after listing various other positions held by the Claimant it said this: "*1992 – 2002 Prof. DAMTP, Cambridge, England, UK.* And in the Conference CV under the heading "*Academic Career*" it said this: "*Professor, DAMTP 1991-2002, Cambridge, U.K.*".



- v) Another CV (which can be dated to 1999 or later) said this “*Present Position: DAMTP, U of Cambridge, since 1992, UK*”.
267. As Mr Caldecott submitted, a Visiting Scholar is not an academic post or an appointment by the University. It is a right to visit and use DAMTP’s facilities for payment and is conferred by an informal agreement with the department. A Visiting Scholar is by definition visiting the department. He or she is not a member of the department. Still less is a Visiting Scholar who happens to be a Professor, a Professor in the department. Such a person need not be (and the Claimant was not) a Professor of Mathematics or Theoretical Physics at all.
268. The Claimant’s case that he was not responsible for the CVs or other material in which false claims were made is unconvincing in my view. These claims were consistently made over an extended period and evidenced a continued desire to exploit the name DAMTP. This, despite clear warnings made to the Claimant personally that it was unacceptable for him to do so. His case is also contradicted by the aggressive position he took in the correspondence when challenged, including with Professor Pedley. The false claims were “*thoroughly misleading*” as Professor Pedley described them at best, and dishonest at worst.
269. The Claimant’s false claims were not merely a matter of (understandable) annoyance and concern to those at DAMTP. They will also have seriously and materially misled those who dealt with him in good faith, particularly bearing in mind the Claimant’s acknowledgement that he was “*neither a mathematician nor a physicist by training*”<sup>14</sup> a similar acknowledgement to one made by him in cross-examination of Professor Keating.
270. The potential for such conduct to continue to mislead is illustrated by the following. In May 2002 a student at Cairo University, a Mr Kareem sent his research plan for his PhD, to Professor Greiner, who knew the Claimant well. Mr Kareem listed the Claimant as one of his two “Supervisors”; describing him as a “*Professor of Applied Mathematics, Cambridge, UK*”. In his oral evidence, the Claimant said he had never supervised this student and suggested he had plucked the claimed affiliation from an unidentified internet site. In my view however, in the light of the misrepresentations knowingly promulgated by the Claimant over a sustained period, the misrepresentation is likely to have emanated from him, or at the very least, the Claimant must accept responsibility for it.

*Frankfurt University*

271. In his pleadings the claim is made by the Claimant at paragraph 5.22 that “*the Faculty of Physics of the Johann Wolfgang Goethe University at Frankfurt appointed the Claimant a Distinguished Fellow of the Frankfurt Association for the Advancement of Fundamental Research in Physics*”. This is not correct.

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<sup>14</sup> In a letter to Professor Landshoff of DAMTP, in September 2000 applying in that letter to be a student of one of the Professors there.

272. The correct position is confirmed by the evidence of Professor Rischke, who is currently a professor of theoretical physics at Johann Wolfgang Goethe University (Frankfurt University) and Chairman of the Board of Directors of the Frankfurt Institute for Advanced Studies (FIAS). Professor Rischke was previously the Chairman of the Department of Physics at Frankfurt University, a 3-year term which ended in September 2010.
273. On 28 June 2002 the Claimant was awarded a Fellowship of the *Frankfurter Förderverein für Physikalische Grundlagenforschung* (the *Förderverein*). The letter informing the Claimant of the award, dated 17 June 2002, came from Professor Greiner. The award was made according to what is said in the appointment documents in appreciation of the Claimant's "*original ideas in developing a theory of fractal space-time allowing the determination of the basic constants of nature.*" Professor Greiner was then the Chairman of both the *Förderverein* and the Department of Physics at Frankfurt University. But as Professor Rischke confirmed there is no connection between the two organisations: the *Förderverein* is a private organisation without any official or legal ties to either Frankfurt University or to the FIAS.
274. The fact that the Claimant's claim to be a Fellow of Frankfurt University is false is effectively admitted in the Amended Reply at paragraph 5.26 where it is said that insofar as entries on the Claimant's website and/or in his CV "*produced on the Claimant's behalf*" mistakenly made that claim, this is "*merely a technical error*".
275. The Claimant's case however is not merely that this was a technical error, but that the Fellowship of the *Förderverein* was "*in point of academic worth or merit indistinguishable from a Fellowship of the University itself*"; and he asserted in cross-examination of QS that the distinction is "*hair-splitting*".
276. I do not agree. As the Defendants submit, the question is a factual one, not an evaluative one: either you have a university fellowship or you do not. There are moreover real differences of substance between the two. First, the *Förderverein* is a private, not-for-profit membership-based organisation, which provides funding for research undertaken at the University and awards prizes for scientific achievement, including to students at the University. It carries out no research or teaching itself. There is a substantial difference in kind between an appointment by a private research society and by a well-known university substantially run on public funds. Second, the award of fellowship of a distinguished university denotes a degree of achievement and prestige. No necessary analogy can be drawn with the award to the Claimant which appears to have been a "one-off", as Professor Rischke confirmed.
277. Professor Greiner's letter to the Claimant of 17 June 2002 said: "*I have the great pleasure to inform you that the Frankfurter Förderverein für Physikalische Grundlagenforschung at our faculty of Physics of the Johann Wolfgang Goethe-University decided to honor (sic) you as a Distinguished Fellow*". Professor Greiner also invited the Egyptian Minister of Higher Education and Minister of State for Scientific Research to the ceremony at which the award was to be made to the Claimant. This letter was written on Frankfurt University notepaper and said: "*our university will be honouring...Prof. Dr. Mohamed El Naschie*".
278. Nonetheless I do not consider the claims by the Claimant resulted from any confusion on his part. In my view, he would readily have appreciated the distinction, and would

have known precisely what his award was. The appointment documents themselves made clear that the appointment was by the *Forderverein* not Frankfurt University (“*An*” means ‘at’ not ‘of’ (*von*)), as did the laudation given by Professor Martienssen at the ceremony at which the award was made to the Claimant in person. I should add that the relevant documents were in German, as was the laudation, and this is a language which the Claimant speaks.

279. Confusion is therefore not a plausible explanation; and indeed no such claim is made by the Claimant in his pleaded case or advanced by Professor Greiner. Confusion would not account either for the fact that in the Claimant’s CVs and in his website entry the word *Forderverein* had been changed to the word “*Faculty*”, and the “*at*” has become “*of*”.

*Jiao Tong Shanghai (“JTS”)*

280. The claim made on the Claimant’s website was that he was an Honorary Professor at JTS. The evidence demonstrates in my view two things: first, that he was an advisory (or visiting) professor, not an honorary professor, and second, that the Claimant was aware of the distinction between the two positions. The latter point is simply demonstrated by the website itself, which as well as claiming the Claimant was an Honorary Professor said (in the preceding paragraph) that he was a visiting professor to other universities.
281. Professor He states that the Claimant was made an honorary *member* of the university, but does not suggest he was made an Honorary Professor. As it is, the appointment letters make it crystal clear that the relevant position was as an advisory professor, not an honorary professor, and that the Claimant knew as much. The relevant emails from Professor Guang said as follows: “*Dear Prof. El-Naschie, I am very glad to tell you that Shanghai Jiao Tong University...would like to award you...the advisory professorship...We really wish... you ... could accept this advisory professorship... CV is needed for the advisory professorship form*”. The Claimant said in his reply: *Dear Professor Guang: I was extremely pleased to receive the gracious invitation...to award me an advisory professorship...”*.
282. In his Amended Reply, the Claimant asserts that a consulting (or advisory) professor is superior to an Honorary Professor. This claim is not supported by any independent evidence and is contradicted by the evidence from three sources. Mrs Yamin Liu (a solicitor with Taylor Wessing, and fluent in Mandarin) translated relevant extracts from JTS website. This contained a list of “*Honorary Titles Awarding to Persons Abroad*”. It began by listing “*Honorary Professors*” and then moved on to “*Consultant Professors*”. The Claimant is listed as a “*Consultant Professor*.” Mrs Liu also spoke to Professor Bai, the Vice Chancellor of JTS from 1986 to 2001. He said the title of Honorary Professor is a distinguished one, and more prestigious and senior to that of Consultant Professor. It is offered rarely, and only to those who have achieved an outstanding position in their academic field. Although Professor Bai retired in July 2001, his evidence as to the relative importance of the two positions was supported by that of Professor Pedley who said the position in relation to the two titles was similar at Cambridge.
283. Having regard to all these matters I am satisfied that the Defendants have established the truth of the higher meaning complained of by the Claimant in relation to the

affiliations issue. That is, the Claimant was not merely cavalier about his academic and professional affiliations, but had claimed impressive affiliations to which he knew he was not entitled, which, and not coincidentally in my view, considerably inflated his academic position and achievements in each case.

284. I should mention here the position in relation to a meaning which concerns the issue of false affiliations, namely that there are grounds to suspect that the false claim in relation to Frankfurt University may have been at least one of the reasons Professor Greiner asked for his name to be removed from the editorial board of CSF: see paragraph 28 above.
285. The Defendants do not justify this meaning. Their case in this regard is confined to the issue of *Reynolds* privilege: see paragraphs 340 to 343 below. The particular imputation is, as the Defendants submit, of minor importance compared to the allegations the Defendants have proved to be true, not least that under *Lucas-Box (f)* and in my view is covered by section 5 of the Defamation Act 1952.<sup>15</sup>

*Lucas-Box (g)* There were reasonable and serious grounds for suspecting that the Claimant used, or caused others to use, fictitious names in order to respond to enquiries about his editorial practice.

286. This is the most curious (indeed it might even be described as bizarre) feature of this case.
287. It originates from references in the Article to “P. Cooper” and a “P. Green” for reasons which are clear from the Article itself. “P. Cooper” was referred to because of the email sent to *Nature* on the Claimant’s behalf by “P. Cooper who claimed to be a spokesperson for the editorial board”: paragraphs 5 and 9 of the Article. “P. Green” was referred to because of the letter received by Dr Škoda, signed by a “P. Green who identified himself or herself as a legal advisor to the editorial board, threatening legal action should Škoda continue sending “defamatory” letters”: paragraph 12 of the Article.
288. As I said when dealing with the issue of meaning, the Claimant did not plead a defamatory meaning in relation to the use of names, but advanced a positive case in aggravation of damage that it was “*disingenuous*”, “*false*” and “*unfounded*” of the Defendants to cast doubt on the existence or identity of the people using these names, which it was said the Defendants did both in correspondence and the Article itself to lend “*spurious credence*” to the allegations against him. The Defendants were also accused of making false and unfounded allegations in doubting the identities of “C. Cole,” “H.G. Boehm” and “P. Stanton” in the reply to the letter of claim. There was a curious and unexplained omission of any complaint in relation to “P. Green”.
289. The Defendants’ case on fictitious names has featured not only “P. Cooper”, and “P. Green” but also “H. G. Boehm”, “P. Stanton” and “C. Cole” (I shall not continue

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<sup>15</sup> Section 5 provides as follows: “In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff’s reputation having regard to the truth of the remaining charges.”

using quotation marks around these names – even though as will be seen, it is appropriate to do so).

290. There are two aspects of this case as to proof. First, the Claimant’s evolving case on the pleadings including the Claimant’s admission, albeit obscure and belated as the Defendants have submitted, that at least 3 of the named individuals (P. Stanton, C. Cole and P. Cooper) did not exist. This in itself is enough in my view to establish the Defendants’ case on reasonable grounds to suspect. Second, that which emerges from a detailed analysis of the emails sent from email addresses used by CSF for correspondence. As to that, the Defendants rely on the contents and timing of the emails sent from 2 email addresses also used to send messages in the Claimant’s own name. It is helpful here to set out a list of the relevant emails together with the purported name of the sender, the email addresses from which they were sent, and the name of the recipients, with further footnoted references to the Claimant’s use of the email addresses. Some, as can be seen, have already been referred to in this judgment in particular on the issues of peer review and retirement.

291. The list is as follows:

08.06.07	Email from “C.Cole” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) to Zelinka re referee reports on paper submitted to CSF
24.07.07	Email from “H.G. Boehm” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) to Grigolini
29.07.07	Email from “C.Cole” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) requiring Esposti et al to revise “Sequence Distance” paper, previously accepted by Grigolini
30.07.07	Email from “C.Cole” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) to Grigolini
21.08.07	Email from “C.Cole” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) to D’Abramo accepting the ‘CTT Paper’ for CSF
22.08.07	Email from “C.Cole” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) to Esposti re revision of “Sequence Distance” paper
October 2007	CSF correspondence with Costello & ors, signed “C. Cole”
05.10.07	D’Abramo alerts CSF to error in the CTT Paper; acknowledged by “C.Cole”
25.10.07	Email exchanges between D’Abramo and “H.G Boehm” re CTT Paper
13.05.08	Email from “C.Cole” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) to Dr Costello de Lacy referring to referee reports of his paper
15.05.08	Email from “C.Cole” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) to Martin Tanke
16.05.08	Email from “C.Cole” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) to Martin Tanke
19.05.08	Email from “C.Cole” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) to Martin Tanke
19.06.08	Email from “P.Green, Legal Adviser” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) to Zinic complaining about Skoda’s letter to Iovane, a member of the Editorial Board
19.11.08	Email from “P.Cooper” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) sent to QS <sup>16</sup>
20.11.08	Email from “Dr. H.G. Boehm” ( <a href="mailto:A.boehm1@t-online.de">A.boehm1@t-online.de</a> ) <sup>17</sup> to QS

<sup>16</sup> The Claimant himself sent emails from this address on 18 & 20.11.08.

<sup>17</sup> The Claimant himself sent an email from this address on 18.11.08 at 19:56.

21.11.08 (12:38)	Email from “Dr H.G. Boehm” ( <a href="mailto:A.boehml@t-online.de">A.boehml@t-online.de</a> ) to QS
21.11.08 (12:51)	QS email to “Dr H.G. Boehm” ( <a href="mailto:A.boehml@t-online.de">A.boehml@t-online.de</a> ) asking him to confirm the role in which he is writing <sup>18</sup>
21.11.08 (15:03)	QS email to “P.Cooper” asking him to identify himself
21.11.08 (16:27)	Email from “P.Cooper” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) to <i>Nature</i> ’s “Exec” email address <sup>19</sup>
21.11.08	Email from “P. Stanton Legal Advisor” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) to <i>Nature</i> (this email not discovered by the Defendants until May 2009)
26.11.08	Email from Claimant (using <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) to Tanke, copying an email addressed to “C.Cole”. Covering email states “ <i>I just received the email copied below from a journalist...</i> ”
28.11.08	2 emails from “Dr H.G. Boehm” ( <a href="mailto:A.boehml@t-online.de">A.boehml@t-online.de</a> ) to QS
29.11.08	Email from “C.Cole” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) to QS
10.01.09	Email circular from “H.G. Boehm” ( <a href="mailto:Chaossf@aol.com">Chaossf@aol.com</a> ) denying that the Claimant is stepping down

*The Claimant’s evolving case*

292. The Defendants’ reply to the letter of claim did indeed challenge whether names of the authors of these various emails were real or fictitious on the ground of their common features. These were the rather peculiar use of initials which indicated neither Christian name nor sex when signing emails, by authors who freely used the same email addresses used by the Claimant himself. In the result, the Defendants pleaded there were reasonable grounds to suspect that these authors were not real people.
293. The Claimant’s pleaded response settled by counsel was unequivocal. Under the heading “*Emails allegedly sent to the Defendants in the names of P. Cooper. H.G. Boehm, P. Stanton and P. Green*”<sup>20</sup> he said this: “*All the aforementioned persons are real persons. Accordingly, there are no grounds for the suspicions*” that they were not.
294. The Defendants asked for further information about the people the Claimant had unambiguously asserted were “*real*”: their full names, place of residence and occupations. The Claimant then said that P. Cooper and P. Green existed, but that he did not know any of the information asked for as they worked on the *administrative* side of CSF, with which he had no involvement. When asked to identify H.G Boehm, C. Cole, P. Stanton and P. Cooper by providing their full names, place of residence and occupation, it was said this was: “*Not within the Claimant’s knowledge.*”
295. When the Defendants pressed the matter, the Claimant amended his Reply. He now said the emails in question from these “*persons*” were written without his knowledge or authority. He also said the person having the requisite knowledge was Ms Boehm,

<sup>18</sup> The Claimant himself sent an email from [A.boehml@t-online.de](mailto:A.boehml@t-online.de) at 14:32, commenting on H.G.Boehm’s email sent at 12:38.

<sup>19</sup> The Claimant himself sent an email from this address on 21.11.08 at 15:53; Mrs Thorsen-El Naschie sent one at 12:30.

<sup>20</sup> The identity of C Cole was not yet in issue as it was added by amendment to the Defendants’ case.

who was not an employee of CSF, but who had assisted informally together with her father H. G Boehm. She it was said was unwilling to provide the information, to which the Claimant therefore did not have access.

296. The Claimant's new stance represented as the Defendants submit, another *volte face*. If, as the Claimant now said, he was in a state of ignorance about these matters, it rendered incoherent his case in aggravation of damages. How could he positively assert in support of his case on damages that it was disingenuous of the Defendants to cast doubt on the existence or bona fides of these people corresponding on CSF's behalf, if, in truth, he knew nothing about them – and in particular if the emails in question from these “persons” were written without his knowledge or authority?
297. Nothing in his explanation in relation to Ms Boehm made any sense either. Why Ms Boehm was unwilling to help the Claimant by giving him this information was never explained. If as she was later to claim in her witness statement, it was she who had used these false names, and her conduct in doing so was reasonable, there was no reason for her not to have given this information to the Claimant if indeed he had ever asked for it. See further, paragraphs 308 and 309 below.
298. When considering the credibility of the Claimant's case on this issue, it is important in my view to look at what was said in the emails which sparked the claim for aggravated damages:

- i) The email from P. Cooper of the 19 November 2008 from [Chaossf@aol.com](mailto:Chaossf@aol.com) under the heading “Re: Interview request from Nature” said this:

“Dear Dr. Schiermeier,”

The Editorial Board of Chaos, Solitons & Fractals have directed us to answer your email of 18<sup>th</sup> November, 2008.

A clear answer to the main thrust of all your questions is that naturally and without doubt Chaos, Solitons & Fractals follows all the procedures required by our guidelines. Our papers are reviewed in the normal way expected from a scientific international journal published by a reputable international publisher.

We may add that in Chaos, Solitons & Fractals we put more emphasis on the scientific content and the originality of the paper and slightly less emphasis on prestigious addresses and impressive affiliations. In that particular respect, we are proud that our journal is truly independent and does not belong to any scientific interest group or structure.

With regard to other questions. I do not think it is appropriate to address them in this form. It would be discourteous vis a vis the Editorial Board and their members. The academic title and affiliation of all members of the Editorial Board as well as naturally the Editor in Chief are printed in each issue of Chaos, Solitons & Fractals in a highly visible form. In addition Prof.

Dr. Dipl-Ing M.S. El Naschie has a home page which is easily found from which you can obtain all the information you wish. For your convenience. It is our pleasure to give it to you...

I trust this answers your email satisfactorily.

Yours sincerely

P. Cooper”

- ii) The email from P. Green to Professor Zinic (Dr Škoda’s senior director in Croatia) of the 19 June 2008, sent from [Chaossf@aol.com](mailto:Chaossf@aol.com) under the heading “Serious complaint” said this:

“Dear Prof. Zinic,

I apologize for writing out of your jurisdiction but I thought before incurring costs and asking for legal assistance in Croatia, that I should write to you directly in the hope that you may use your good efforts to put a firm end to the following extremely serious affair.

One of your members of research staff a Dr. or Prof. Zoran Skoda has written the following letter to Prof. Iovane from University of Salerno

“Dear Prof. Iovane.

you are a member of the editorial board of Chaos, Solitons and fractals. The main editor, El Naschie repeatedly publishes alchemy articles in his own journal. Being a member of the editorial board, you compliantly adhere to this corruption and promotion of pseudoscience. As a responsible scientist, I am asking you to explain your position. I will take further action, including contacting European Mathematical Society, Max Planck Gessellschaft, European Physical Society and Elsevier

Zoran Skoda, mathematical physicist

Institute Rudjer Boskovic...CROATIA”

I am sure you will agree with me that this letter is defamatory, intimidatory and constitutes harassment. What prompts Dr. Skoda to appoint himself a judge of not only science but also corruption and what authority does he have to ask Prof. Iovane to explain himself, as if he is a master of interrogation. A man who writes a letter of this form is in our opinion unfit to hold a position in your institution.



I have consulted with Prof. Iovane as well as Prof. El Naschie who is the subject of the defamatory allegations. We do believe that Dr. Skoda has acted on instructions from outside Croatia and received favors (sic) in return. This makes the situation even more severe than it is.

We are instructed to instill (sic) Court proceedings in England where the defamation was received and in Croatia where it was issued. Never the less (sic) we propose that if Dr. Skoda is reprimanded by you (sic) Institution which he is also bringing into disrepute by using your name in such a way and if he undertakes not to repeat this scandalous and libelous (sic) statement or anything similar, then for the sake of peace we will not pursue this matter further.

Please also note that Dr. Skoda has written to other people in a similar manner and has used the premises of your Institution for spreading his libelous (sic) statements.

We look forward to receiving your answer by email by the close of business on Tuesday 24<sup>th</sup> June, 2008. Thank you for your attention to this matter.

P. Green

Legal Adviser”

299. If what the Claimant now said in his pleaded case was true, the claims made in these emails were patently dishonest. Both emails purported to be written on behalf of CSF. P. Cooper purported to write on behalf of the Editorial Board in respect of an important matter: the response to inquiries of some moment from QS: see paragraph 368 below. P. Green purported to have consulted with the Claimant before threatening legal action (a threat which in the context of this litigation has a somewhat familiar ring). It would have been serious professional misconduct for a legal adviser to make such a threat, purportedly on instructions, when he or she had none. It would have been serious misconduct of a different kind to make such a threat under the pretence of being a legal adviser when you were not a legal adviser at all.
300. Further, if in truth the emails were not only written without the Claimant’s knowledge or authority, but he did not even know who had written them, why was he using them in this litigation in support of a claim for aggravated damages, which attacked the Defendants’ temerity in questioning the role and identity of the persons concerned?
301. It is to be borne in mind that the Claimant’s most recent pleading said he first heard of these “persons” when queries about them were made by Nature: “As I mentioned with unnerving (sic) repetition, I do not know anything about Cole or any secretarial support, real or fictitious in the mind of your clients who are desperate to find anything to escape the trial. I became aware of these ridiculous names only when you made a fuss of them and that is the first time I heard these names.”

302. So much for the pleading history which as I have said is sufficient to make good the “reasonable grounds to suspect” case.
303. I do not accept as the Claimant also asserts in his pleadings that these matters are “*totally irrelevant*” or are otherwise insignificant. In my view the case made here raises serious questions about the way CSF was run and the Claimant’s integrity and honesty, questions which provide a common thread running through many aspects of this case.
304. As the Defendants submit the positions claimed by P. Cooper and P. Green, were not mere administrative positions. If they existed and had those roles, the Claimant would have known of them as the Editor-in-Chief. The Board was not a body which regularly met round a table. Indeed given the Claimant’s evidence it too was a fiction: he said: “*There is nothing called the Editorial Board in reality. There is nothing called the Editorial Board. I am the journal, my Lady. I said it very clearly. This is all façade. This is all decoration...*”
305. P. Cooper also purported to correspond on behalf of CSF’s Board with *Nature*’s senior executives in relation to enquiries made by QS about the Claimant personally: see paragraph 372 below. If P. Cooper did not exist, he could not have been directed by the Board to do anything. P Green’s email (falsely) claimed to have come from a lawyer, with all that implied. It made a serious though unspecified allegation of corruption against Dr. Škoda. It purported to have been written after consultation with the Claimant, and threatened proceedings (presumably by the Claimant) provided the demands of the email were complied with. None of this could have been true if P Green did not exist, or indeed if the Claimant was unaware of his existence.
306. These emails do not stand alone. An e-mail from P Stanton for example sent from [Chaossf@aol.com](mailto:Chaossf@aol.com) on 21 November 2008 to the same senior email address at *Nature* (“exec”) as that used by P. Cooper said this:

“Dear Sir,

We have received many letters from a German scientist/journalist working from your offices in Munich. The journalist tried to extract from Prof. Otto Rossler information regarding Chaos, Solitons & Fractals and according to Prof. Rossler he was putting words into his mouth which he did not say or mean. We have therefore refused to answer his questions on the telephone and we requested that things were put in writing. Suddenly we received a letter this morning requiring a photograph of Prof. El Naschie to be included in the article about him and Chaos, Solitons & Fractals which is about to be published.

We would like to inform you in no ambiguous terms that we regard the entire matter with the greatest distrust. We are sure that the entire affair is part and parcel of the controversy related to a relatively recent article which appeared in your sister publication, Scientific American.

The article in question is by [three individuals]...Many have commented that at worst plagiarism was committed in this article and at best the Authors of this article have intentionally, or unintentionally omitted giving credit to the originators of the main idea, namely the Egyptian Prof. Mohamed El Naschie, the English/Canadian Prof. Garnet Ord and the French Prof. Laurent Nottale.

You may read all the comments made on this article in order to appreciate the size of the controversy.

To make things worse, it seems that the Authors have enlisted the services of one of their Editors, Dr. John Baez in order to launch a viscous (sic) defamatory campaign against Prof. El Naschie. The allegations were so horrendous and so false that it will be leading to a criminal prosecution.

As a result of all that it seems that somewhere it was decided to go on the attack and to use an article full of misinformation in one of the world's most prestigious journals, namely Nature.

Of course we would not dream of interfering with your work but we implore you to look into this matter very thoroughly before you make a final decision which is yours to make but we most definitely reserve our right to answer to whatever is alleged in this article and to take all legal means to protect our interests and the interests of our publisher Elsevier Science Ltd.

Yours faithfully

P. Stanton

Legal Advisor

cc England Palmer Solicitors"

307. There is no evidence that *England Palmer* (a firm who appear to have attended a meeting with Elsevier in 2008 relating to the Claimant's retirement dispute with them at that time) was ever copied in on this email, sent on behalf of CSF by someone using a false name purporting to be its legal adviser but giving the (additional) misleading impression that he or she had authority to speak on behalf of Elsevier as well as the Claimant. As Mr Caldecott commented somewhat dryly in opening, there were at this point apparently a whole shoal of legal advisers without Christian names on the loose at the Claimant's home in Cobham.
308. The Claimant's case, based on Ms Boehm's witness statement, is now that she alone was responsible for using the names Stanton, Cole, Cooper, and Green; a stratagem Ms Boehm says in her witness statement she adopted to avoid pressure from journalists after discussing the situation with her elderly father, H.G. Boehm who also worked for the Claimant on a voluntary basis. I do not accept the explanation for the stratagem. The name C. Cole was clearly being used in the ordinary course of CSF's

business as early as 2007: see paragraphs 202, 203, 204 and 291 above. Nor do I accept that the stratagem was Ms Boehm's.

309. The Defendants submit for a number of reasons it is more likely that Mrs Thorsen-El Naschie and not Ms Boehm sent the false name emails even though in cross-examination Mrs Thorsen-El Naschie strongly denied she had done so:
- i) First, from 2005 or 2006, Ms Boehm had a full time job running a hotel in Germany and was not closely involved in the running of CSF;
  - ii) Second, although Ms Boehm was said to have access to [chaossf@aol.com](mailto:chaossf@aol.com), the Defendants have not discovered any emails sent from that address in her name (though there are 2 emails, one post-dating publication, sent from this email address signed H.G. Boehm). Mrs Thorsen-El Naschie said in evidence that she "assumed" that Ms Boehm had used the address in the past, but did not know whether she had done so since starting work at the hotel. When Mrs Thorsen-El Naschie found emails sent to chaossf which she wished to draw to Ms Boehm's attention, she said she forwarded them to Ms Boehm's private email address or work email address. All this suggests that, by 2008 at least, Ms Boehm was not using the chaossf address;
  - iii) Third, Mrs Thorsen-El Naschie accepted that she would have been in touch with the Claimant about his diary and whereabouts in advance of the meeting with Mr Tanke on 5 June 2008 and that "*it was he and I corresponding about dates, if I remember correctly*". It was she who eventually fixed the date and booked the venue. She had in any event been closely involved in the Elsevier discussions throughout, including sending letters with her own "take" on the issues surrounding the termination of the Claimant's position at CSF (something she had also done when in respect of his dispute with DAMTP). It is implausible to suggest that the correspondence from C. Cole to Mr Tanke on this particular and highly sensitive subject was conducted by Ms Boehm rather than the Mrs Thorsen-El Naschie;
  - iv) Similarly implausible is Mrs Thorsen-El Naschie's professed lack of surprise in cross-examination, at seeing unfamiliar names appearing on outgoing emails from chaossf;
  - v) The firm "*England Palmer Solicitors*" purportedly copied in to the P. Stanton email to *Nature* of 21 November 2008 was a firm known to the Claimant and Mrs Thorsen-El Naschie. The Claimant's evidence was that Mrs Thorsen-El Naschie found the firm and instructed them. There is however no reason to believe the firm was known to Ms Boehm;
  - vi) When Ms Boehm read the transcript of the Claimant's evidence (as she said she had in a letter to the court) she then sent a further witness statement dated 1 December 2011, stating she did know Mr England. The description she gave of him however was patently based on the transcript. The Claimant had described him as tall, blond but not very efficient. In her 1 December witness statement Ms Boehm now said "*I know he is tall, blond and not very efficient*". This was a transparent attempt to help Mrs Thorsen-El Naschie out of her difficulty;

- vii) The P. Stanton email included a telltale misspelling: “*viscous*” (instead of “*vicious*”): see paragraph 306 above. The same misspelling occurred in Mrs Thorsen-El Naschie’s trial witness statement which she typed herself, and in 3 other documents which admitted she had either typed or had a hand in typing (the Part 18 Response, the Claimant’s witness statement dated 9 May 2011 and Mervat Hamid’s witness statement dated 27 July 2011);
- viii) Again, having read the transcript, Ms Boehm tried to help out, casually dropping a “*viscous*” into her letter of 1 December 2011. It was the first evidence of Ms Boehm using either “*vicious*” or “*viscous*”, although she has been forthright, previously, in her denunciation of the “campaign” against the Claimant. This, like her earlier intervention was a transparent attempt to help Mrs Thorsen-El Naschie out of her difficulty, but it ended up confirming rather than undermining the contention that the false name emails were sent by Mrs Thorsen-El Naschie rather than her;
- ix) The P Stanton email had been preceded some 22 minutes earlier, by an email to Mr Tanke, also sent from Chaossf, but this time signed by Mrs Thorsen-El Naschie personally, referring to the request for a photograph and making very similar points to the P. Stanton email. It said this:

“Dear Martin,

We have this morning received an email from Nature, copy enclosed requesting from Mohamed a photograph to be included in an article which will appear next in Nature about him and naturally about CS&F about which they have been asking many questions.

Mohamed is confident that this is part and parcel of the plot against him to divert attention from the plagiarism committed against him by [the same three individuals identified in the P. Stanton email] in their article in Scientific American.

I am sure you know that the publisher of Nature and the publisher of Scientific American are one and the same and as I have said, they are trying to divert attention from the real problem which is the plagiarism which they committed and the possible legal action against Scientific American.

It might be within your power to use your contacts to stop the publication of this article by a journalist from Bavaria who is apparently a friend of [one of the persons named above].

We are confident that the intention of this article is defamatory towards Elsevier as well as Mohammed.

Regards,

Lydia Thorsen-El Naschie”

- x) Mrs Thorsen-El Naschie said the first email was dictated to her by the Claimant, or at least reflected the gist of what he told her but could give no proper explanation for how the strikingly similar second email from P. Stanton came about without her involvement.
310. These points persuade me that it is more likely than not that Mrs Thorsen-El Naschie sent at least some of the false name emails. I also take the view that Ms Boehm deliberately attempted to mislead the court by using the idiosyncratic spelling “*viscous*” for the word “*vicious*” after she had read the transcripts of Mr Caldecott’s cross-examination of Mrs Thorsen-El-Naschie in which the particular significance of the misspelling of this word was explored.
311. Whoever sent the false name emails however, whether it was Ms Boehm or Mrs Thorsen-El Naschie, or indeed both of them, the question which matters is whether the emails were sent with the Claimant’s knowledge or authority. I am satisfied they were.
312. The Claimant was as the Defendant’s submit, evasive on the question of false names; and there is simply no adequate explanation for his refusal to answer the Defendants’ legitimate questions in the face of a court order, or for the changes to this part of his case. There are also some significant ‘coincidences’ as to timing, with regard to emails sent by the Claimant from addresses used by fictitious persons on the same days (i.e. between sent between 19 and 21 November 2008) on like issues: see the footnotes to the table at 291 above and the history of the Claimant’s contacts with QS and the Defendants prior to publication at paragraphs 365 to 371 below.
313. Further, as I have been able to observe, the Claimant has a strong personality. He regarded CSF as “his” journal, and *Nature’s* defence of this action as an affront. He expresses himself forcefully and at length on matters he perceives as touching on his academic prowess, scientific abilities and reputation, about which he is acutely sensitive. These observations are borne out by his communications with those he regarded as having crossed him in relation to such matters - various personnel at Elsevier, Professors Pedley and Professor Turok amongst others - communications which are distinctive and resonate in style, tone and content with those under consideration here.
314. CSF was a small operation in publishing terms run from the Claimant’s home with minimal administrative support. The Claimant and those dealing with matters on his behalf kept closely in touch.
315. Whilst the Claimant may not have troubled himself with ordinary day to day administrative matters, the emails from Dr Škoda and from QS could not by any stretch of the imagination be put into that category. They went to matters of the utmost importance to the Claimant, as his bringing of this libel action has demonstrated.
316. There is also no doubt that the Claimant was well aware of the unwelcome interest from journalists as Mrs Thorsen-El Naschie accepted in evidence when she said:

“...at this point Mohamed was fully in control of this stuff. He was well aware of all the journalists we were getting e-mails from, or to most of the e-mail addresses...”

He kept repeating “I want everybody to be in on this picture so everybody knows what they are doing, everybody is aware of what is happening”. We all felt under huge pressure”

317. In the circumstances it is implausible that the Claimant simply left it to others to deal with these matters on his behalf; or that Mrs Thorsen-El Naschie or Ms Boehm or anyone else would have had sent out the emails under false names without his authority or knowledge. It is equally implausible that he reacted either with indifference or equanimity to the fact, as it is said to be, that strangers to him, including legal adviser(s) purported to speak to *Nature* for publication on his behalf particularly bearing in mind as Mr Caldecott has pointed out, that as he has demonstrated in his oral evidence the Claimant is quick to see conspiracies against him and to challenge the authenticity of documents.

### **Issue 3: Honest Comment**

318. In view of my findings on justification, as I have indicated, this issue can be dealt with relatively briefly. As set out above, the *Control Risk* comments cover three of the principal allegations complained of – lack of peer review, poor quality papers and inflation of the Impact Factor.
319. The elements which must be established if a defence of honest comment is to succeed are well-established (see the five propositions or elements of the defence identified by Lord Nicholls of Birkenhead in *Tse Wai Chun Paul v Albert Cheng* [2001] EMLR 777 at paragraphs 16 to 21, the fourth of which has been re-written by the Supreme Court in *Spiller and another v Joseph and ors* [2010] UKSC 53 at paragraph 105).
320. The first, third and fourth elements identified by Lord Nicholls are not in issue or do not really arise. Public interest is admitted (element one). As for the proposition that the comment should indicate at least in general terms the facts on which the comments are being made (element four), the Article clearly indicates in general terms what the ‘commentators’ are ‘commenting on’: that is, the contents of the Claimant’s articles with regard to poor quality and peer review, and the Impact Factor statistics with regard the inflation of the Impact Factor. Further, since the statistics relied on in the Article and in the defence are verified by Ms McVeigh, there cannot be any sensible challenge to the factual substratum of the ‘comments’ concerned (element three).
321. Thus, the only elements in dispute are the second and third of Lord Nicholls’ propositions, that is, whether the material allegations are conveyed by way of comment or fact; and, whether they are opinions which an honest commentator could express on the subject-matter concerned (an element described by Lord Phillips in *Spiller* at paragraph 6 as “*pertinence*”).

322. In my view, the three allegations are recognisably comments and each is appropriately pertinent or germane to the subject matter of the comment.
323. The allegation of poor peer review arises from what is said by Peter Woit in paragraph 4 of the Article, where he says “*It is plain obvious that there was either zero or, at best very poor, peer review of his own papers*”. This is obviously his evaluative external judgment, or inference from the content of the papers themselves, a matter underscored by the fact that his words are preceded by the words “*Peter Woit says he thinks that*” (emphasis added) and by the context in which he is quoted. That context is the report of the opinions of other scientists on the quality of the Claimant’s papers, an issue which plainly feeds into that of peer review. As the first sentence of paragraph 4 says: “*Most scientists contacted by Nature comment that El Naschie’s papers tend to be of poor quality.*” (emphasis added). Though the use of the word “comment” is not necessarily determinative of the fact/comment question, in my view the use of that word here simply makes express what is obvious, namely that the assertion that the articles tended to be of “*poor quality*”, is the scientists’ subjective evaluation of the articles, a matter which is pre-eminently, a matter of opinion. These comments are evidently ones which are germane to the subject-matter criticised and could be honestly expressed on the contents of the Claimant’s articles.
324. The allegation about CSF’s Impact Factor arises from what is said in the second sentence of paragraph 11 of the Article by Dr Škoda (“*But that may be the result of a high rate of self-citation, says Zoran Škoda*”). This it seems to me is a tentative opinion on a possible cause, based on certain observable features, rather than a factual allegation purporting to be true based on exhaustive analysis. The factual bases for the comment is indicated in paragraph 11 in the first and last sentences between which the comment of Dr Škoda is sandwiched viz CSF’s relatively high Impact Factor for 2007 and the level of citation of the Claimant’s papers in CSF where the relevant analysis is set out. Again it seems to me that the opinion expressed by Dr Škoda passes the pertinence test: that is, it is pertinent for a commentator to express a view that the relatively high Impact Factor “*may be*” the result of self-citation and the level of citations of the Claimant’s work in CSF by other authors publishing in CSF (Journal to Editor Self-Citation) even if a connection is not in the event, borne out.
325. Thus, in my judgment, the defence of honest comment is made out. I should add it has not been suggested in this case that the Defendants or the commentators concerned (the “*scientists contacted by Nature*”, Peter Woit and Dr Škoda) were not aware of the relevant facts which formed the bases for the comment. But in any event it is evident that they were aware of the facts relied on to support the comments, at least in general terms. See the matters dealt with in relation to *Reynolds* privilege below.

#### **Issue 4: Reynolds Privilege**

326. The defence of *Reynolds* privilege<sup>21</sup> protects responsible journalism in relation to the publication of matters of public interest. The relevant legal principles were identified by the Defendants in opening. They are well-established following the decisions of the House of Lords *Reynolds* itself and in *Jameel v Wall Street Journal Europe Sprl* [2007] 1 AC 359, [48]-[51]. See also more recently the decision of the Supreme Court in *Flood v Times Newspapers* [2012] UKSC 11. The Defendant must establish that the

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<sup>21</sup> *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127



publication concerned a matter of public interest; that the inclusion of the defamatory matter complained of was justifiable, i.e. that it made real contribution to the public interest element of the article, commensurate with the seriousness of the allegations made (and on this question, allowance must be made for editorial judgment) and that the steps taken to gather, verify and publish the information were responsible and fair.

327. It is useful to have regard to the list of factors identified by Lord Nicholls in *Reynolds* at 205, when considering the third question, though these provide broad non-exhaustive guidance, and are not akin to statutory hurdles to be overcome:

“1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true. 2. The nature of the information, and the extent to which the subject matter is a matter of public concern. 3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories. 4. The steps taken to verify the information. 5. The status of the information. The allegation may have already been the subject of an investigation which commands respect. 6. The urgency of the matter. News is often a perishable commodity. 7. Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary. 8. Whether the article contained the gist of the plaintiff's side of the story. 9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact. 10. The circumstances of the publication, including the timing.”

328. Some allowance may be made for the journalist's reasonable view as to the meaning which the article would convey to ordinary reasonable readers – a principle which compensates to some extent for the artificiality of the “single-meaning rule”: *Bonnick v Morris* [2003] 1 AC 300 [24]-[25].

#### *Evidence*

329. The Defendants' case as to the genesis, preparation and publication of the Article was based on the evidence given by QS as the journalist who researched and wrote the Article, Alex Witze (*Nature's* US-based Print News Editor) and Mark Peplow (the London-based News Editor); and on *Nature's* internal documentation created in the course of that process, including QS's handwritten notes (which were in German, but with translations into English). As I have said, the Claimant was precluded by Eady J's Order from leading evidence suggesting that the Article formed part of a conspiracy by the Defendants and others to defame him, though this is a topic he has frequently returned to, including in his closing submissions. Apart from the limited evidence from the Claimant on the Defendants' pre-publication approaches and from

Ms Boehm and Mrs Thorsen-El Naschie, the Claimant also relied on a short witness statement from Professor Greiner as to his pre-publication conversation with QS.

*Background*

330. Alex Witze is now a contributing editor to Science News magazine, and a freelance science writer. She was the Print News Editor for *Nature* at the time the Article complained of was published, and was the Editor in charge of the Article. She has a scientific background and has worked as a science writer, both freelance and employed, since 1993.
331. Mark Peplow is the News Editor for *Nature*. He was involved in commissioning the Article and in preparing the final version for publication. He too has a scientific background. He worked as a reporter at *Nature*, and became its Online News Editor in July 2008 and its News Editor in September 2008. He and Alex Witze spoke regularly several times a day about commissioning and editing stories. *Nature* goes to print at about 1p.m. on Tuesdays.
332. QS is German, and is fluent in English. He is based at *Nature's* offices in Munich. He has a degree in geography, economics and statistics from Ludwig Maximilian University, Munich. He became a trainee reporter at *Nature* in 1995. He became *Nature's* German correspondent in June 1999, and was promoted to a senior reporter in October 2009. His focus has predominantly been on articles relating to Earth Sciences but he has also written articles about theoretical physics and scientific misconduct amongst other matters.

*The genesis, preparation and publication of the Article*

333. It is convenient to consider the genesis, preparation and publication of the Article by reference to the order in which the investigation proceeded. I shall concentrate on the evidence relating to various stages of the investigation as a result of which the most of the material upon which the Article was based came into being or into the Defendants' hands.
334. *Stage 1: Professor's Baez's blog:* This started the investigation which led to the Article's publication. Mr Peplow first heard about the Claimant when he received an email from Eric Hand, *Nature's* US physical sciences reporter, who regularly emailed Mr Peplow about potential news stories. The email from Mr Hands dated 10 November 2008 said: "You want to put anyone onto a crazy crank who edits a semi-respectable Elsevier journal." It provided two links to Professor Baez's blog (called the "n-Category Café" blog) and threads which were subsequently looked at by and discussed with Ms Witze. The Baez blog is now no longer available but secondary evidence is. Relevant extracts from it were later reproduced in a blog hostile to the Claimant called "El Naschie Watch". The extracts contained Professor Baez's detailed critiques of the Claimant's papers and evidenced a lively level of interest about the issues he raised amongst those with an apparent interest in the topics about which he was writing. On 14 November, Geoff Brumfiel, *Nature's* physical sciences correspondent, also alerted Mr Peplow to the Baez blog.
335. As a result of the interest shown in the topics raised by the blog, Mr Peplow decided to assign QS to investigate some of the allegations being made. His initial brief to QS

that morning was he should talk to people making allegations about the Claimant to see whether there had been a serious breach by CSF of appropriate standards the readers of *Nature* would normally expect to apply to the editing of the scientific journals. Thereafter, Mr Peplow spoke regularly to QS as his 'line manager' and discussed about the progress of his investigations.

336. QS read the Baez blog. It contained references to Peter Woit, Dr. Škoda, and the Claimant's self-citation record. It suggested the Claimant had abused his editorial power and his papers were based on poor mathematics. QS thought these matters raised issues, including lack of proper peer review which were of general interest to the scientific community and to the readers of *Nature*. QS had never met or spoken to Professor Baez. But he had come across his name when reading the proof copy of a book sent to *Nature* for review ("*The Trouble with Physics*") where he was mentioned as a promising scientist.
337. *Stage 2: the early Škoda exchanges.* QS looked into the background of Dr Škoda. He found he was a post doctoral scientist in the theoretical and mathematical physics group at the Institute of Rudjer Boskovic (the IRB), in Croatia which QS knew to be a leading research centre in south-eastern Europe. On 17 November 2008 QS contacted Dr Škoda by email. Dr Škoda replied the same day. His email highlighted in some detail a number of matters that he recommended QS follow-up during his investigations:
- i) The Claimant had claimed suspicious affiliations to academic institutions on papers that he had published online, for example to Frankfurt University;
  - ii) The Claimant had been using a "*dishonest (unauthorised) affiliation*" to DAMTP;
  - iii) Dr Škoda had written to other CSF Editorial Board members in May 2008 querying the editorial malpractices at the journal. Two CSF Editorial Board members had responded to his letter in terms supportive of Dr Škoda's complaint. The first, Professor Greiner, said he had been appointed to the Editorial Board without being asked. The second, Professor Michael Thompson of University College London, said the same;
  - iv) An email was subsequently sent to Dr Škoda's director at IRB, Professor Zinic, signed "P. Green, Legal Adviser", threatening legal action. Another member of the Editorial Board, Professor He, was the main editor of an applied mathematics journal called the "*International Journal on Non-Linear Sciences and Numerical Simulation*" ("IJNSNS"). At 5.099, IJNSNS had a higher Impact Factor than the two leading journals in mathematical physics and pure mathematics, respectively the *Communication in Mathematical Physics* and *Annals of Mathematics*. Dr Škoda had looked into this and concluded that the Impact Factor appeared to be artificially inflated due to frequent cross-referencing between a small group of authors, including the Claimant and Professor He. He also found many papers to be of poor quality;
  - v) There may have been other members of the Editorial Board who would not normally have obtained the positions and grants they had but for the help of

the cross-publication network, and by publishing papers on obscure subjects that were not subject to proper peer review;

- vi) Elsevier had been using Professor He's high citation figures in its advertising and marketing. Dr Škoda's email noted that he had first been alerted to CSF by an advert that he had received from Elsevier highlighting the fact that Professor He was the most-cited mathematician in the last 2 or 3 years. Dr Škoda had taken a closer look at a paper and concluded that it was "nonsense", was lacking in any meaningful content, and contained over 250 citations – none of which were to the 10 leading mathematics journals;
  - vii) Dr Škoda pointed to what appeared to be inflated claims as to the Claimant's standing as a scientist which had been removed from his webpage the previous week, after he and Professor Baez had drawn attention to them.
338. Dr Škoda also forwarded to QS the emails he had received from Professor Thompson and Professor Greiner. The email from Professor Thompson was dated 19 June 2008 and said this:

“Dear Zoran,

I understand your concern, and being retired, I intend to resign from the Editorial Board immediately. Others may not realise they are on it (my name just appeared on the cover). “

All the best

Michael Thompson”

339. The email from Professor Greiner was dated 24 June 2008 and said this:

“You are right. I'm carried as an Editor even though I've never been asked. I withdraw my editor ship (sic) by writing to the journal today.”

Sincerely

(Walter Greiner)”

340. *Stage 3: the Greiner Conversation.* Following the receipt of Dr Škoda's email, QS contacted and spoke to Professor Greiner by telephone the same day (that is, the 17 November). Their conversation was in German.
341. QS's notes in translation record the following. QS told Professor Greiner that he was intending to write an article about the Claimant. He explained he was investigating the Claimant and asked him about the Claimant's claim, alleged to be false, to be distinguished fellow of the Institute of Physics at Frankfurt University According to QS's notes Professor Greiner said this: “*Alles falsch, nichts dergleichen*” (*All false,*

*nothing of the sort*"). He also told QS that everything the Claimant publishes in CSF is "*stuss*", German slang for "*rubbish*". QS asked him whether Professor Greiner was on the editorial board of CSF. Professor Greiner said, as he had in his email to Dr Škoda, that he was still listed though he had asked several times for his name to be removed. QS's impression was that Professor Greiner was happy *Nature* was investigating the matter, telling QS: "*Make sure you stop this journal.*"

342. In this context I should mention the content of Professor Greiner's witness statement relied on by the Claimant, which is somewhat curious. It does not mention or address the email sent to Dr Škoda at all. Certainly, it does not demur from its contents. What it does address however is a question QS did not ask Professor Greiner. Professor Greiner says of his conversation with QS: "*I did not say that Professor Mohamed El Naschie is not a distinguished Fellow of the Foerdeverein.*" This misses the point. The claim QS was investigating was whether the Claimant was a fellow of Frankfurt University, and it was the response to this question which appeared in the Article. The Claimant also suggested in cross-examination of QS and in his closing submissions that Professor Greiner had sent an email to Ms Boehm in which he had called QS a dirty person (to put it politely). There is no evidence to support this assertion: the email has never been produced for example, and this is not a matter which is material to my conclusions in any event.
343. *Stage 4: the Martienssen conversation.* On 18 November 2008 QS contacted Professor Werner Martienssen, who is a retired member of the Physics Faculty of Frankfurt University. The content of their conversation, recorded in QS's notes, is fairly summarised in the quote attributed to Professor Martienssen in paragraph 14 of the Article. Professor Martienssen said he was a regional editor and reviewer for CSF but did not review the Claimant's papers. He said he regarded the Claimant's ideas as "*at least interesting*" (a term QS understood to have been used with apparent irony). He also said that the Claimant had used false affiliations and had "*confused something.*" QS understood this to be a reference to the Claimant's representation that he was a distinguished fellow of the Institute of Physics of Frankfurt University.
344. *Stage 5: The arXiv.org search.* On 18 November, QS received an email from Mr Peplow alerting him to the arXiv website, <http://arxiv.org/> ("ArXiv"). ArXiv is a service run by Cornell University library providing open access to 536,275 e-prints in Physics, Mathematics, Computer Science, Quantitative Biology, Quantitative Finance and Statistics. QS conducted a search on the Claimant's name. It revealed that as a result of the "*incorrect affiliation*" of the Claimant one of the Claimant's papers had been withdrawn from the scientific literature altogether; and his affiliation on another had been removed. In QS's view, this supported what had already been told by Dr Škoda regarding the claim to a false affiliation to DAMTP.
345. *Stage 6: The Ebeling conversation.* QS contacted Professor Werner Ebeling of the Humboldt University in Berlin, who was then listed as a Regional Editor of CSF. He explained that he was investigating a story about the Claimant. According to QS's notes, he asked Professor Ebeling whether he had the Claimant's email address. Professor Ebeling told him that it was extremely difficult to contact the Claimant because it appeared he did not use email. QS asked how the Claimant could handle his correspondence and organise peer review. Professor Ebeling said "*God only knows*". He told QS that he did not know how to contact the Claimant other than via his postal address. He said he was not aware of any peer review of the Claimant's papers but

commented he found the Claimant's papers "*very original*". Reading between the lines QS said he took "*very original*" ("*sehr originell*") to mean odd, or unusual. QS said he had Professor Ebeling in mind when writing in the final paragraph of the Article that "*a small minority of physicists cautiously recognizes the originality of [the Claimant's] ideas*". He decided to include Professor Martienssen's actual quote in the Article as in his view, it was more resolutely positive than what was said by Professor Ebeling.

346. *Stage 7: The Roessler conversation.* QS obtained Professor Otto Roessler's telephone number from Professor Ebeling, and obtained the Claimant's email address from Professor Roessler. Professor Roessler is a physicist at the University of Tuebingen. Professor Roessler said he had an extremely high opinion of the Claimant, who was a long term friend and whom he regarded as a genius. He said men such as the Claimant deserved a free hand (to be published without peer review). He said that "*in the past journal editors used to be allowed to judge for themselves what to publish. I consider it a big loss for science that they no longer are.*" QS took his comment to imply that Professor Roessler knew there has been no, or no proper peer review of the Claimant's papers in CSF. QS asked Professor Roessler directly about the issue of peer review at CSF but in his view, Professor Roessler was evasive on the topic.
347. *Stage 8: The Woit conversation.* QS read the website blog hosted by Peter Woit, referred to in Professor Baez's blog. Peter Woit is mathematical physicist at Columbia University in New York, where he is a senior lecturer. QS checked Peter Woit's affiliation to Columbia. Although he did not give him this title in the Article, QS was under the mistaken impression Peter Woit was a Professor, rather than a senior lecturer (a mistake he discovered shortly before the trial). QS saw that in 2005 Peter Woit posted comments about the Claimant on his blog in response to several messages that had been posted by third parties. QS also discovered that in 2006 Peter Woit had published a book about problems with string theory, '*Not Even Wrong*'. From what he had seen, QS formed the view that Peter Woit was familiar with the Claimant 'case' and the field of science in question.
348. On 18 November QS contacted Peter Woit by telephone. During their conversation, QS explained he was investigating allegations that the Claimant had been abusing his editorial power at CSF, and that planned to write an article about this. He asked for Peter Woit's opinion on the Claimant's work, and the issue of self-publication. Peter Woit said the Claimant had published "*huge amounts of nonsense...for years*" and there could not possibly have been proper peer review of the Claimant's papers. In his opinion the Claimant's papers were mathematically and scientifically of little or no value, and this was an extreme case of self-publication.
349. *Stage 9: the Schimmer conversation.* On 18 November QS spoke to Ralf Schimmer, the librarian at the Max Planck Society. He said libraries bought Elsevier publications in subscription packages comprising several titles. This was a practice designed to promote weaker journals. He was not aware of CSF but said "*we have to accept that we have bad journals in our portfolio*".
350. *Stage 10: The Skoda Mathscinet email.* Mathscinet is a reviewing service run by the American Mathematical Society. On 18 November 2008 Dr Škoda sent QS an email about this service. Only three reviews for the Claimant's articles were there (most of the Claimant's papers were not reviewed, or only abstracts appeared with no review)

which Dr Škoda copied into his email. They went into some technical detail, and QS described them in his evidence, accurately, as “*resolutely negative*” as can be seen from the following short extracts. The first said: “*This paper seems to the reviewer to contain no mathematics.*” The second said: “*their bringing into the picture a deterministic system forced by random noise does nothing but introduce an additional perversion*”. The third said: “*There is plenty of wild speculation and misprints, but no rigorous arguments.*” QS said he did not review the articles under review himself, because he assumed the reviewers had sufficient expertise to do so.

351. *Stage 11: The Škoda telephone call.* On 20 November 2008 QS spoke to Dr Škoda. Their conversation was in English and covered the matters Dr Škoda had already dealt with in his email, and many of the issues subsequently raised in the Article. These included self-publication, peer review, the repetitiveness of the Claimant’s papers, that the circle of people who cited the Claimant was extremely small and that problems discussed were known to many and ignored. He said he had been told by ‘t Hooft (Gerard ‘t Hooft) a Nobel prize winner and an acquaintance of the Claimant, that the Claimant was a good guy, but that he did not agree.
352. *Stage 12: The P. Green- Zinic email.* On 21 November 2008 Dr Škoda forwarded this email to QS.<sup>22</sup> In QS’s view, Dr Škoda was clearly sceptical about whether P. Green actually existed, a scepticism QS shared. Dr Škoda pointed out that P. Green had written in bad English, which QS took to mean bad English like that used by the Claimant; P. Green did not identify or give any details of the legal firm he purportedly worked for nor did he give his Christian name. The email was also sent from the CSF email address.
353. *Stage 13: The Middle Eastern affiliation enquiries.* On 21 November 2009 QS sent two emails to the Egyptian Ministry for Science and Technology asking for confirmation that the Claimant was, as he claimed on his website, an advisor to the Ministry. The email bounced back twice. QS also telephoned KCAST using 3 different numbers found on their website and emailed them once seeking confirmation that the Claimant was as he claimed on his website, a principal advisor to KCAST. He received no reply. He kept copies of the emails to the Egyptian Ministry and of his notes of the telephone numbers he called, but not of the bounce-back emails or the email to KCAST. Given the volume of documentation relating to the *Reynolds* process overall, if I can so describe it, I do not consider the absence of 3 emails is material or remotely comparable to the documentary position on peer review (that is, that there were no documents) as the Claimant sought to suggest in his closing submissions.
354. *Stage 14: The Lord May telephone call.* On 21 November 2008, QS called Lord Robert May having tried to contact him earlier, on 17 November. Lord May is a former President of the Royal Society, who is listed as a member of the CSF Honorary Editorial Board and QS considered Lord May’s integrity in matters of good scientific practice and publishing ethics to be beyond doubt. QS told Lord May that *Nature* was intending to run a story about editorial problems at CSF. He asked him if he was aware that he was listed as an Honorary Editor, and of what editors must bear in mind when publishing their own work in their own journal. Lord May said he was embarrassed he had never disassociated himself from the CSF, which he said looked

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<sup>22</sup> For the text see paragraph 298 ii) above.

interesting in 1991, but had since lost its scientific significance. On self-publication he said: “*You have got to be very careful about it. There has got to be, and got to be seen, a check and balance system to make sure journal editors don’t abuse their editorial power.*” He said at the Proceedings of the National Academy of Sciences (PNAS) where he was one of 200 who were on the editorial board, there were very careful mechanisms to ensure the editorial board did not get “*privileged access*”. If a member of the editorial board wanted to publish in PNAS, which happened 4 to 5 times a year, an extra review procedure, organised by the editorial board, was required.

355. *Stage 15: Contacts with the Claimant.* These occurred throughout the period when the Article was in preparation and are dealt with below.
356. *Stage 16: Contacts with Elsevier.* On 17 November 2008 QS sent an email to Elsevier. In it, he said he was investigating an alleged case of self-promotion and abuse of editorial power at CSF; and that the Claimant was or was one of the authors of over 300 papers in CSF and of 5 in the upcoming December 2008 edition. He asked for Elsevier’s comments. Elsevier gave three emailed responses. The first on 17 November 2008 is accurately quoted at paragraph 7 of the Article. The second, on 25 November 2008 from Ms Tabachnikoff Elsevier's Director of Corporate Relations, added an additional comment, the gist of which was accurately quoted at paragraph 6 of the Article. It said this:

“Dr El Naschie's retirement as Editor in Chief of Chaos, Solitons and Fractals will be announced to readers in the first issue of 2009. Elsevier and Dr El Naschie have been in discussion for quite some time about the details of his retirement and the transitional arrangement for papers under review.”

357. The third and final response came from Ms Tabachnikoff, later that day. It said that the Claimant’s retirement had been planned for quite some time so was not announced as a result of the recent blog debate or *Nature’s* queries. QS was sceptical about what was said. Alex Witze took the ultimate decision not to incorporate the quote on the basis it added nothing material to what was said by the quotes already incorporated.
358. *Stage 17: QS’s citation analysis.* At the request of Alex Witze, QS performed a citation analysis based on papers in CSF’s December 2008 edition which Dr Škoda had forwarded to him by email on 23 November. Dr Škoda’s email noted that in addition to self-citing his own work, the Claimant was also citing the work of a number of his contemporaries, and only 10 of the 37 papers published in the 5 December edition of CSF were from authors not in the Claimant’s ‘group’. It contained a detailed breakdown of the December 2008 issue, referred to the dominance of the Claimant’s theory in the papers, and his connection with Professor He. The results of QS’s analysis were as follows:
- i) In total, the Claimant was cited 138 times (in 18 of the 36 papers) of which at least 121 citations were to papers in CSF;
  - ii) The Claimant's 5 single-authored papers contain 62 citations of his own work, of which 57 were to papers in CSF;



- iii) 11 of the 31 papers not written by the Claimant seemed to relate to his theories. These 11 papers included at least 58 citations of his work in CSF, of the 68 citations of his work in total;
- iv) Two of the papers seemed to have no direct connection to the Claimant's ideas, but cited the Claimant 3 and 5 times, respectively;
- v) Paper 24 was written by Professor He. It contains 14 citations of Professor He's own work and 2 citations of the Claimant's papers;
- vi) 5 papers included (in total) 7 citations of the Claimant's papers published in Professor He's journal, IJNSNS;
- vii) The letter to the editor includes 2 citations of the Claimant's work in CSF.

*Public interest*

359. The importance to the scientific and wider community of proper peer review in scientific publishing has already been extensively addressed and does not need to be repeated here. Having regard to those matters it seems to me that the Article addressed a number of matters which were and are of high public interest. These include the overall integrity of the peer review process set against the particular responsibility of editors of peer review journals, or journals which are presented as such by a reputable publisher such as Elsevier, in relation to issues such as self-publication and self-citation. The public interest in relation to these matters was enhanced by the Claimant's self-citation rate in 2008.
360. Ms Witze explained from *Nature's* perspective, why the situation investigated by QS merited reporting:
- “How scientific articles come to be published has a wide importance and relevance to the scientific community. *Nature's* readers depend on the publication of their articles to help build their careers. A publication record is more than just statistics – investment, funding and procurement decisions are often taken on the basis of these figures. If there are grounds for believing that one author's pieces are being accepted for publication in preference to another's, for reasons other than merit, then our readers will want to know.”
361. I agree. Against that background, the retirement and the possible reasons for the departure of the Founding Editor of many years standing of such a journal was also a matter of public interest as was the validity of his claimed associations and qualifications. The allegations made against the Claimant were not only part of a story which served a public purpose, in my view they were integral to the public interest element in the Article.<sup>23</sup> This was in other words, a public interest story, *par excellence*.

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<sup>23</sup> See the observations by Lord Hoffman in *Jameel* at [48] and [51].

*Tone*

362. The Article was obviously critical of the Claimant, but I consider its tone was moderate and balanced. This is a feature which must be a matter of impression to a certain extent, and here needs no elaboration. The Claimant suggested the picture and captions used were unfair. Having regard to the content of the Article, I do not consider they were.

*The Claimant's side of the story*

363. In my judgment, the Claimant's side of the story, based on material gathered by QS and *Nature* from approaches made to the Claimant prior to publication, was responsibly dealt with and reflected in the Article.
364. Paragraphs 5 and 6 contained Elsevier's quotes on peer review and its suggestion of an orderly retirement. Paragraph 7 set out Elsevier's suggestion that discussions over peer review with CSF were "*part of the normal process*". Paragraph 8 set out the Claimant's statement as to his editorial approach, suggesting CSF emphasised scientific quality over established pedigree. Paragraph 9 set out P. Cooper's statement that it would not be appropriate to deal with Nature's questions about Frankfurt. Paragraph 12 told the reader that Dr Skoda's criticisms of the Claimant's editorial practices had been vigorously refuted under threat of legal action. Paragraphs 13 and 14 told the reader there were named scientists in both Germany and China who clearly rated the Claimant as a scientist.

*The nature of the Claimant's response and the effect on Nature's assessment of the Claimant*

365. The history of the communications between *Nature* and the Claimant is as follows.
366. On 18 November 2008 QS sent an e-mail in English to the Claimant using the chaos e-mail address, [chaossf@aol.com](mailto:chaossf@aol.com), in which he introduced himself as a science journalist with *Nature* and asked him for a telephone interview. The Claimant replied the same day in German, using Ms Boehm's email address ([A.Boehml@t-online.de](mailto:A.Boehml@t-online.de)) which is where the Claimant said QS's e-mail had been forwarded. He said amongst other matters, that confidential information about authors could not be given because libel laws in England, where CSF's headquarters were located were strict, and only written questions could be answered. He also said his German was better than his English, that QS could write to him in future in German, and perhaps they could meet some time at his holiday home near Munich.
367. On 19 November, QS replied to the [A.Boehml@t-online.de](mailto:A.Boehml@t-online.de) address in German. He asked the Claimant 5 straightforward questions covering the topics of peer review; the Claimant's current employment; his affiliations; and whether the Claimant was a mathematician or a physicist. The only reply came from P Cooper the same day using the [Chaossf@aol.com](mailto:Chaossf@aol.com) address. As is clear from the parts of the email quoted in the Article it addressed the issue of peer review but said it would not be appropriate to answer questions about the Claimant's personal employment and affiliation. Instead, it directed QS to what was described as the Claimant's "homepage" the web address

of which was given, which made the false claim about Frankfurt University criticised at paragraph 9 of the Article.<sup>24</sup>

368. The next communication came on the evening of 20 November. This was an email signed Dr H. G. Boehm from [A.Boehm1@t-online.de](mailto:A.Boehm1@t-online.de), the address the Claimant had used on 18 November. It asked a number of questions relating to the Claimant's conspiracy theory, apparently at the request of CSF's London office – in fact, the Claimant's home address in Cobham – and QS replied politely to it the following morning, the 21 November.
369. Later that day, QS received a further email (at 12.38) signed Dr Boehm. It returned to the conspiracy theory suggesting QS had written a story about the Claimant before (which he had not). The Claimant was obviously following the e-mail traffic closely (assuming for this purpose that the earlier emails were not actually written or dictated by him) since less than 2 hours later, at 14.32 an email signed by him was sent from the [A.Boehm1@t-online.de](mailto:A.Boehm1@t-online.de) address from which it apparent that he had picked up on exchanges earlier that day. This bizarre, and presumably facetious email to QS, described a romantic hotel the Claimant said he used to stay at with his father, and suggested once the dust had settled, QS and he might meet and go skiing in the Bavarian Alps.
370. At 15.03 QS sent an email to P. Cooper asking for details of Cooper's identity. At 16.27 (less than 2 hours after the "skiing" email from the Claimant) an email signed P. Cooper was sent from the *chaossf* address to senior executives at *Nature* complaining about QS. Somewhat ironically in the circumstances, it complained that CSF had been inundated by QS "*purporting to be acting on behalf of Nature*" and asked QS to desist from sending further emails.
371. *Nature* regarded this as a charade and reasonably so in my view. An email from Ms Witze to QS at the time said (somewhat presciently in the circumstances) said that she was convinced the emails *Nature* were receiving were coming from the Claimant himself; it was she who had asked QS to confirm the identity of P. Cooper.
372. These peculiar communications, the tone of which is somewhat difficult to convey, are not merely relevant to whether the Claimant was given an opportunity to respond, but to the suspicions and reasonable ones as it seems to me, within *Nature* at the time, that something 'fishy' was going on to put it colloquially. As QS said in evidence, the lack of response from P. Cooper tended to confirm such suspicions. The use of pseudonyms as he suspected them to be, struck him as wholly unprofessional and suggestive of a desire to avoid giving full answers. They justified (in the *Reynolds* sense) the decision to say in the Article for example, that P. Cooper "claimed" to be a spokesman for the CSF Editorial Board: in other words to the decision to point out the lack of clarity as to who P. Green and P. Cooper actually were.

#### *Verification*

373. After QS's investigations, and before the Article was published it is apparent from the Defendants' internal emails that a careful internal process of review was undertaken.

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<sup>24</sup> The print out available is dated 29 May 2009 but there is no suggestion that it was modified between November 2008 and the date of this printout.

Ms Witze for example raised a considerable number of questions with QS in order to check his investigations and the facts, one instance of which was her request that QS perform the citation analysis to which I have referred at paragraph 358 above. She, together with Mr Peplow and *Nature's* Chief sub-editor, Colin Sullivan who was responsible for sub-editing the Article, produced three drafts before publication then finalised the Article after legal advice.

374. Having regard to the matters set out above, the process overall, whether with regard to the gathering of information, its verification or its ultimate publication was in my judgment responsible and fair. It is unnecessary in those circumstances to do more than highlight a few matters.
375. *Qualifications.* *Nature* made only one outright allegation, namely that the Claimant had claimed to be a fellow of Frankfurt University, when he was not. It was evident that such a claim had been made on the Claimant's website to which QS was referred by P. Cooper with the apparent authority of the Claimant and CSF. QS's conversation with Professor Greiner confirmed that the claim was false, and QS obviously believed this to be the case at the time. Indeed Colin Sullivan sent an email to QS on 24 November 2008 in which he pointed out that the Claimant's fellowship was from the *Forderverein* not the University by reference to the laudation which was attached. There is no real dispute that the claim on the website was false, and in my judgment, the significance of the point was not exaggerated. QS was entitled to take the view he did at the time that, as he said in evidence "*this is not about hair-splitting. It is a fundamental difference whether to claim to be a fellow of a publicly funded university or whether to claim to be a fellow of a private association*".
376. The Cambridge/DAMTP issue was not mentioned in the Article at all. *Nature* had some information on this topic (see Stage 5 above) but not many of the documents which are now relied on for the purposes of justification. The position with regard to the verification of the Claimant's positions with the Egyptian Ministry for Science and Technology and the Ministry of Science and Technology of Saudi Arabia, the Article was accurately reflected in the Article, viz. that *Nature* had been unable to confirm these qualifications. As to China, what was said in paragraph 8 of the Article did not in my view cast doubt on the Claimant's professorships in Shanghai whether read on its own or in context, thus accurately reflecting QS's belief at the time that those to positions were correctly stated.
377. *Self publication and citation.* As is clear from paragraphs 2, 11 and 13 the Article's focus was on the December 2008 issues of CSF. The core material derived from Dr Škoda; and *Nature* used in addition the further analysis done by QS (see Stage 17) which has not been challenged as inaccurate. In all the circumstances it seems to me it was reasonable and responsible to include the citation issues dealt with in the Article (the number of papers published by the Claimant in CSF in 2008 particularly in the December 2008 issue, the numbers of papers related to his theories the number of citations of his work by others published in that issue and the possible impact on CSF's IF).
378. The Claimant criticised the objectivity of both Dr Škoda and Professor Baez. But it is important to note that the statistics in some respects spoke for themselves: in other words, these were not matters, included without a basis in fact. Further, as is apparent from the various stages of the investigation set out above, the Defendants had a

number of relevant sources apart from Dr Škoda, which suggested Dr Škoda's criticisms had merit on this issue, including Professor Roessler for example: see paragraph 346 above.

379. *Quality.* The statement in the Article that most scientists “*contacted by Nature*” regarded the Claimant’s papers as being of poor quality was not literally accurate since Professors Ebeling, Roessler and Martienssen were complimentary to varying degree about the Claimant’s ideas. On the other hand, that the papers were of poor quality was the view communicated to QS by Dr Skoda, Professor Greiner (a matter not denied in his witness statement) and by Peter Woit. QS was also entitled in my view to look at the picture overall including the considerable material he had that misgivings about the quality of the Claimant’s published papers were more widespread. That there were only 3 reviews of the Claimant’s work in Mathscinet, each of which were resoundingly negative was a factor which it was reasonable to take into account on this topic, in my view, as was the fact that the Claimant had a very low citation rate from writers with whom he was not connected.
380. *Peer review and editorial abuse.* This criticism is attributed only to Peter Woit in the Article, though Dr Škoda said something similar in his telephone call with QS on 20 November 2008. It seems to me however that this was a reasonable inference from the criticisms made of the quality and the quantity of the Claimant’s papers in CSF and the quantity of journal to editor citation, bearing in mind too the somewhat equivocal responses on the issue of peer review from those who supported the Claimant, for example Professor Roessler. As to the Claimant’s position, peer review or its absence was his responsibility as Editor-in-Chief and it was clearly justifiable (again, in the *Reynolds* sense) to make this point in the overall context.
381. *The Claimant’s departure from Elsevier.* The article alleged that there were reasonable grounds to suspect that the Claimant’s imminent retirement was linked to the issues of quality, peer review and the like which were highlighted. In my view this was justifiable when set against the background of the other matters that had been investigated. QS said he did not think it necessary to contact the Claimant about the retirement question as Elsevier were in a position to answer the questions relating to that issue, and past history (as he put it) suggested he would not receive a satisfactory response from the Claimant. I consider this was a fair and reasonable position to adopt in the circumstances, which included the peculiar communications from the Claimant and from those whom *Nature* reasonably believed were likely to be using fictitious names.
382. In the result, I consider the Article was the product of responsible journalism. It resulted in the publication of information of high order of public interest. The claim to *Reynolds* privilege therefore succeeds as an additional defence to the Article.

### *Outcome*

383. For all these reasons the Claimant’s claim is dismissed. I have considered the communications from the parties and the draft orders proposed by the parties following the circulation of the judgment in draft. It follows from my conclusions that the Defendants are entitled to their costs of the action to be assessed if not agreed. All other consequential matters can be dealt with in writing in default of agreement or at a further hearing if necessary.

**SCHEDULE 1**

**ARTICLES WRITTEN BY THE CLAIMANT PUBLISHED IN  
CHAOS, SOLITONS AND FRACTALS DURING 2008**

No.	Volume	Issue	Title
1	35	1	String theory, exceptional Lie groups hierarchy and the structural constant of the universe
2	35	1	Super- symmetric quantum gravity inverse coupling from the Exceptional Lie symmetry groups hierarchy
3	35	1	Notes on exceptional lie symmetry groups hierarchy and possible implications for E-infinity high energy physics
4	35	1	Exceptional Lie groups hierarchy and some fundamental high energy physics equations
5	35	1	Noether's theorem, exceptional Lie groups hierarchy and determining $1/\alpha \cong 137$ of electromagnetism
6	35	1	Symmetry group prerequisite for <i>E</i> -infinity in high energy physics
7	35	2	Quarks confinement – A simple mathematical derivation
8	35	2	Conformal <i>E</i> -infinity theory, exceptional Lie groups and the elementary particle content of the standard model
9	35	2	Quantum gravity unification via transfinite arithmetic and geometrical averaging
10	35	2	The exceptional Lie symmetry groups hierarchy and the expected number of Higgs bosons
11	35	2	From <i>E</i> -eight to <i>E</i> -infinity
12	35	2	Derivation of Newton's gravitational fine structure constant from the spectrum of Heterotic superstring theory
13	35	2	The fundamental algebraic equations of the constants of nature
14	35	2	Conjectures regarding kissing spheres hierarchy and quantum gravity unification

15	35	2	Hierarchy of kissing numbers for exceptional Lie symmetry groups in high energy physics
16	35	3	Extended renormalizations group analysis for quantum gravity and Newton's gravitational constant
17	35	4	The exceptional eightfold way to a possible Higgs field
18	35	4	Roots lattice hierarchies of exceptional Lie symmetry groups and the elementary particles content of the standard model
19	35	5	Quarks confinement via Kaluza-Klein theory as a topological property of quantum classical spacetime phase transition
20	35	5	Non- perturbative super symmetric quantum gravity coupling
21	36	1	High energy physics and the standard model from the exceptional Lie groups
22	36	1	On a major exceptional Lie symmetry groups hierarchy and quantum gravity
23	36	2	Deriving quarks confinement from the topology of quantum spacetime and heterotic string theory
24	36	3	Asymptotic freedom and unification in a golden quantum field theory
25	36	3	On a transfinite symmetry group with 10 to the power of 19 dimensions
26	36	3	Freudental magic square and its dimensional implication for $\mathbb{R}_0 \simeq 137$ and high energy physics
27	36	4	Transfinite harmonisation by taking the dissonance out of the quantum field symphony
28	36	4	On dualities between Nordstrom-Kaluza- Klein, Newtonian and quantum gravity

29	36	4	A derivation of the fine structure constant from the exceptional Lie group hierarchy of the micro cosmos
30	36	5	Quantum golden field theory – Ten theorems and various conjectures
31	36	5	A new look at quarks confinement
32	36	5	One and two – stein space hierarchies in high energy physics
33	36	5	On a canonical equation for all fundamental interactions
34	37	1	Quarks confinement
35	37	1	Kaluza- Klein unification- Some possible extensions
36	37	1	Removing spurious non-linearity in the structure of micro – spacetime and quantum field renormalization
37	37	2	An outline for a quantum golden field theory
38	37	2	Exact non- perturbative derivation of gravity's $\bar{G}$ fine structure constant, the mass of the Higgs and elementary black holes
39	37	3	Bounds on the number of possible Higgs particles using grand unification and exceptional Lie groups
40	37	3	Average exceptional Lie and Coxeter group hierarchies with special reference to the standard model of high energy particle physics
41	37	5	Mathematical foundation of $E$ - Infinity via Coxeter and reflection groups
42	37	5	On quarks confinement and asymptotic freedom



43	38	2	On the phase transition to quarks confinement
44	38	3	The standard model physical degrees of freedom interpretation of the electromagnetic fine structure coupling $\alpha_0 \simeq 1/137$
45	38	3	P-Adic analysis and the transfinite E8 exceptional Lie symmetry group unification
46	38	4	Yang - Mills instanton via exceptional Lie symmetry groups and E-infinity
47	38	4	Towards a quantum field theory without Gribov copies and similar problems
48	38	4	Deriving the largest expected number of elementary particles in the standard model from the maximal compact subgroup $H$ of the exceptional Lie group $E_{7(-25)}$
49	38	4	From classical gauge theory back to Weyl scaling via $E -$ infinity spacetime
50	38	4	Quasi exceptional E12 Lie symmetry group with 685 dimensions, KAC- Moody algebra and E-infinity Cantorian spacetime
51	38	4	P-Adic unification of the fundamental forces and the standard model
52	38	4	The internal dynamics of the exceptional Lie symmetry groups hierarchy and the coupling constants of unification
53	38	4	Using Witten's five Brane theory and the holographic principle to derive the value of the electromagnetic fine structure constant $\alpha_0 = 1/137$
54	38	5	Fuzzy multi-instanton knots in the fabric of space-time and Dirac's vacuum fluctuation
55	38	5	An energy balance Eigenvalue equation for determining super strings dimensional hierarchy and coupling constants

56	38	5	Anomalies free E – infinity from von Neumann’s continuous geometry
57	38	5	Eliminating gauge anomalies via a “point-less” fractal Yang - Mills theory
58	38	5	Fuzzy knot theory interpretation of Yang-Mills instantons and Witten’s 5 Brane model

**SCHEDULE 2**

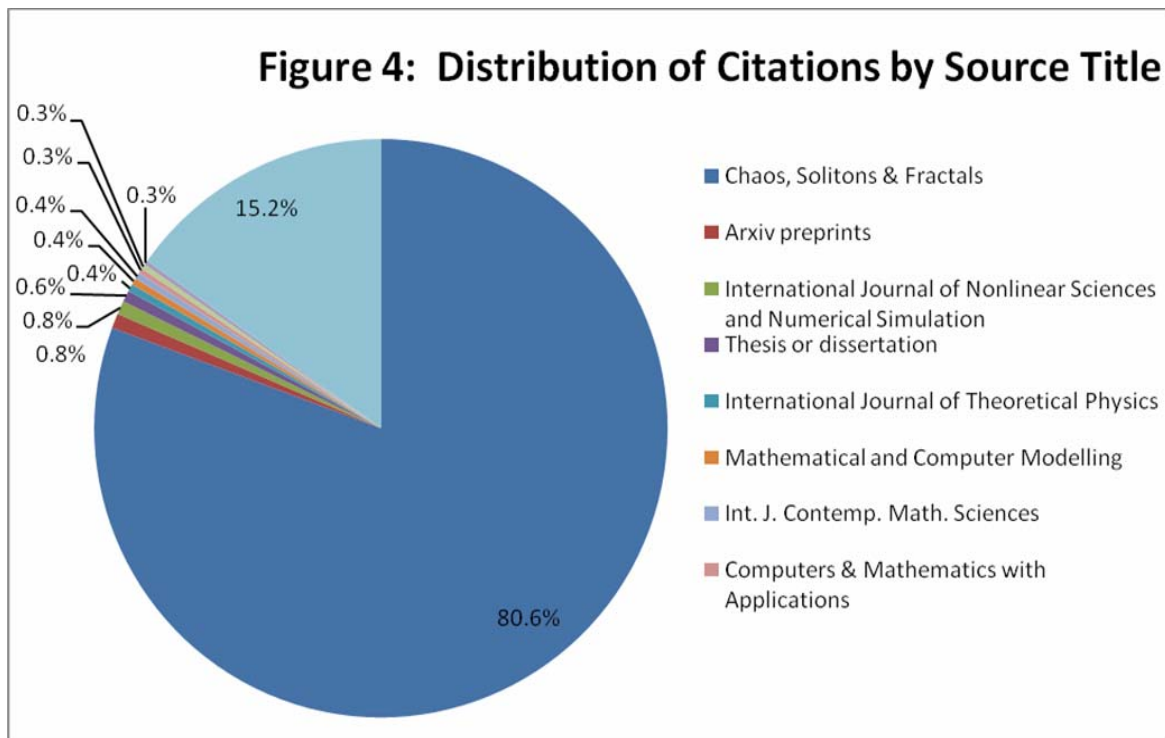


Figure 4: Distribution of Citations by Source Title shows that, of 6320 citations to Claimant’s work that reported an identifiable source in Google Scholar, 5096 (80.6%) of these were from materials published in CSF. The next 9 sources, in order of descending frequency of citation are also shown in Figure 4. Collectively, these titles account for 264 (4.2%) of citations to Claimant’s work. The remaining 407 sources provided 960 additional citations to the Claimant’s work, representing the final 15.2% of citation.

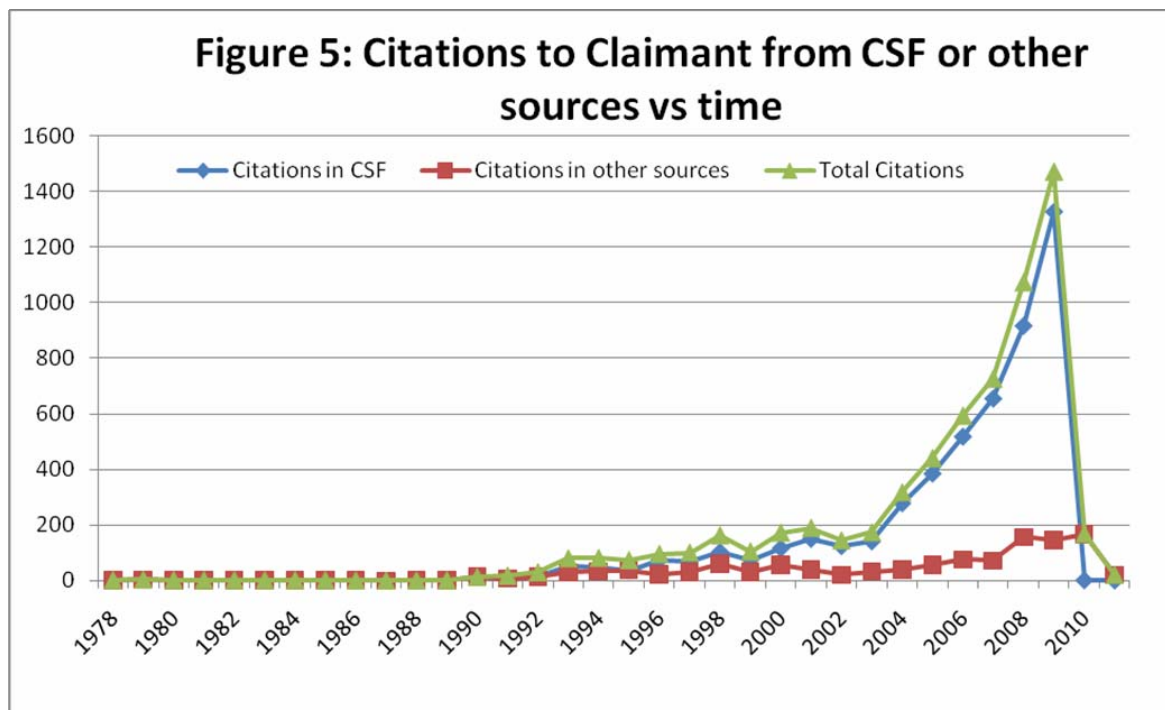


Figure 5: Citations to Claimant from CSF or other sources vs time shows how the concentration of citations in CSF developed across time, following the same shape of the line showing the total citations to the Claimant’s work.